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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by Mr. Enrique Bernales Ballesteros, Special Rapporteur, pursuant to Commission resolution 2001/3

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CONTENTS

		Paragraphs	Page
Executive summary			3
Introduction		1 - 2	4
I.	ACTIVITIES OF THE SPECIAL RAPPORTEUR	3 - 15	4
	A. Programme of activities	3 - 5	4
	B. Correspondence	6 - 15	4
II.	FIRST MEETING OF EXPERTS	16 - 24	9
III.	MERCENARY ACTIVITIES IN AFRICA	25 - 47	11
IV.	CURRENT STATUS OF MERCENARY ACTIVITIES	48 - 62	15
V.	TERRORISM AND MERCENARY ACTIVITIES	63 - 81	18
VI.	PROBLEMS RAISED BY A LEGAL DEFINITION OF MERCENARISM	82 - 90	22
VII.	ENTRY INTO FORCE OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES	91 - 96	25
VIII.	CONCLUSIONS	97 - 110	26
IX.	RECOMMENDATIONS	111 - 119	28

Executive Summary

The report outlines the Special Rapporteur's activities in 2001, commenting on the first meeting of experts on mercenary activities, held in January. The Special Rapporteur has received invitations from the Governments of El Salvador and Panama to conduct official missions to those countries in 2002 in connection with transit through those countries of mercenaries taking part in terrorist attacks against Cuba. There follows an analysis of terrorist activities over the reporting period, with special consideration of the situation in Africa. The Special Rapporteur reviews the conflicts in Angola, the Democratic Republic of the Congo and Sierra Leone, and considers the presence of mercenaries in those conflicts and the trafficking that takes place to finance them, in particular trafficking in diamonds and other precious stones. The Special Rapporteur encourages initiatives to combat illegal trafficking in diamonds and other gems in which mercenaries are involved, in particular the initiative undertaken by the Government of South Africa and various non-governmental organizations.

The Special Rapporteur continues his consideration of the relationship between terrorism and mercenary activities. The terrorist attacks of 11 September 2001 in New York, Washington DC and Pennsylvania reflect a high degree of preparation and logistical organization, and the possibility that the perpetrators resorted to the hiring of mercenaries for some of the preparations if not final execution, cannot, a priori, be excluded. It is also hard to believe that all those that took part in the act or the preparations acted solely on ideological, political or religious grounds, since some may have taken part for pay or have been motivated by financial considerations or the promise of material compensation. The Special Rapporteur regrets the lack of response to his requests for investigation of the financial networks and havens used to fund trafficking and acts of terrorism and mercenary activities.

Lastly, the Special Rapporteur welcomes the entry into force of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted on 4 December 1989, and trusts that more States will ratify it and accede to it. He stresses the need to arrive at a clearer, more functional and comprehensive definition of the term mercenary, and requests the second meeting of experts, to be held in 2002, to take up this question.

Introduction

1. The Commission on Human Rights, in its resolution 2001/3, decided to consider at its fifty-eighth session the question of the use of mercenaries as a means of violating human rights and of impeding the exercise of the right of peoples to self-determination, and, in accordance with General Assembly resolution 55/86, to renew the mandate of the Special Rapporteur for a period of three years. The decision was endorsed by the Economic and Social Council in its decision 2001/244. The General Assembly, in its resolution 56/232, welcomed the report of the Special Rapporteur (A/56/224), requested the Special Rapporteur to continue taking into account in the discharge of his mandate the fact that mercenary activities were continuing to occur in many parts of the world and were taking on new forms, manifestations and modalities, and to report, with specific recommendations, to the General Assembly at its fifty-seventh session his findings on the use of mercenaries to undermine the right of peoples to self-determination.

2. For the above reasons, and further to Commission resolution 2001/3, the Special Rapporteur has the honour to submit this report to the Commission on Human Rights for its consideration at its fifty-eighth session.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Programme of activities

3. The Special Rapporteur submitted his report to the Commission on Human Rights on 22 March 2001. The Special Rapporteur returned to Geneva on three occasions, from 21 to 25 May 2001, from 9 to 12 July 2001 and from 3 to 7 December 2001, to hold consultations with representatives of States, meet members of non-governmental organizations and draft his reports to the General Assembly and the Commission on Human Rights. While in Geneva the Special Rapporteur held working meetings with the Thematic Mechanisms section of the Activities and Programmes Branch of the Office of the United Nations High Commissioner for Human Rights.

4. The Special Rapporteur introduced his report before the Third Committee of the General Assembly on 31 October 2001. While in New York he met representatives of States and non-governmental organizations headquartered in New York and held working meetings with officials in the Office of the High Commissioner for Human Rights at Headquarters.

5. The Special Rapporteur has been invited by the Governments of the Republics of El Salvador and Panama to visit those countries in the context of investigations into terrorist activities against Cuba by mercenaries transiting their territory. The Special Rapporteur welcomes the invitations, which he sees as an indication of willingness to cooperate with his mandate, and expects to make the visits in May 2002.

B. Correspondence

6. Pursuant to General Assembly resolution 55/86 and resolution 2001/3 of the Commission on Human Rights, on 16 June the Special Rapporteur sent a communication to all States Members of the Organization, requesting:

(a) Information on the possible existence of any recent mercenary activities (recruitment, financing, training, assembly, transit or use of mercenaries);

(b) Participation by nationals of their country as mercenaries in the commission of acts against the sovereignty of other States, the exercise of self-determination by other peoples and the enjoyment of human rights;

(c) Information on the possible existence of mercenary activities in the territory of another State against the respondent State;

(d) Information on the possible participation of mercenaries in the commission of internationally wrongful acts, such as terrorist attacks, formation of and support for death squads and paramilitary organizations, abduction of and trafficking in persons, and trafficking in drugs or weapons and contraband;

(e) Information on domestic legislation in force and on treaties outlawing mercenary activities to which the State is a party;

(f) Suggestions for enhancing the international treatment of the topic, including proposals for a clearer definition of mercenaries; and, lastly,

(g) Information and views on private security service and military consultancy and training companies.

7. The replies given by the Governments of the Republics of Cuba and of Maldives are contained in paragraphs 24 to 26 of the report of the Special Rapporteur to the General Assembly at its fifty-sixth session.

8. In a note verbale dated 11 July 2001, the Permanent Mission of Kuwait to the United Nations Office at Geneva submitted the following reply:

> "The Kuwaiti authorities primarily wish to affirm in connection with this matter that Kuwait continues to maintain the same firm standpoints which it is seen to demonstrate in all international and regional forums in condemning the use of mercenaries as a flagrant violation of the principles on which relations among States and peoples are based, of human rights principles and of the noble values so firmly rooted in the human conscience;
>
> "Kuwait has no proposals to make in regard to the question of the definition of mercenaries, as it is unable to add any new elements to the definition contained in Additional Protocol I to the Geneva Conventions of 1949 relating to the Protection of Victims of International Armed Conflicts, which it considers to be adequate. Kuwait is bound by that definition, particularly since Protocol I became part of Kuwaiti national legislation following Kuwait's accession thereto. It is well known that, in addition to the definition of a mercenary, article 47 of the said Protocol provides that a mercenary shall not have the right to be considered a combatant or a prisoner of war. Nor is he entitled to benefit from the ensuing legal effects."

9. In an earlier note verbale dated 12 August 1999, the Permanent Mission of Kuwait to the United Nations Office at Geneva stated:

> "It is worth noting that, as a member of the international community, Kuwait's foreign policy is based on the principle of respect for the independence and territorial integrity of States. It therefore condemns the use, financing and training of mercenaries and, on the basis of these firm standpoints, has not permitted such activities to take place on its territory and will never do so. Moreover, it supports no mercenary activity in any other State. As for the legislative measures adopted by Kuwait in order to ensure that its territory is not used for the purposes of recruiting, financing and training mercenaries, it should be pointed out that, as Kuwait does not suffer from this phenomenon and has never experienced any such activity throughout its long history, it has not promulgated any legislation on mercenaries. Kuwait, however, acceded to the four Geneva Conventions of 1949 for the protection of war victims pursuant to the Royal Decree issued on 12 August 1967 and to Protocols I and II thereto pursuant to the Royal Decree issued on 3 December 1984, all of which became part of Kuwaiti national legislation."

10. The Permanent Mission of Lebanon to the United Nations Office at Geneva, in a note verbale dated 23 July 2001, stated that:

> "(a) There are no mercenaries in Lebanon;
>
> "(b) Lebanon is opposed to any use of mercenaries as a means of violating human rights or of hindering the exercise of the right of peoples to self-determination;
>
> "(c) Lebanon has no information on the presence of mercenaries in the territory of other countries which might affect the independence of Lebanon."

11. In a letter dated 31 July 2001, the Permanent Representative of Latvia to the United Nations Office at Geneva informed the Special Rapporteur that:

> "There are no stated facts in Latvia about the existence of any mercenary activities such as recruitment, financing, training, assembly, transit or use of mercenaries. Furthermore, there is no information available to the authoritative and competent State institutions, such as the Ministry of Defence, the Ministry of Foreign Affairs and the Ministry of the Interior, about occasions in which citizens or non-citizens of the Republic of Latvia have taken part as mercenaries in other States and committing acts against the sovereignty of other States, against the exercise of the right of other peoples to their self-determination or committing human rights violations. There is not any information on mercenary activities in the territory of another State that affect or could potentially affect the sovereignty of Latvia or the exercise of the right of Latvians to self-determination or their enjoyment of human rights. I am pleased to apprise you that with a Decree of the Supreme Council of the Soviet Republic of Latvia of 20 November 1991, the Republic of Latvia acceded to the General Conventions of 12 August 1949 on the protection of war victims and its First Additional Protocol of 1977. The aforementioned Convention and Protocol are in force since 24 June 1992.

"Inasmuch as the Republic of Latvia has not had any experience concerning mercenary activities, the term 'mercenary' has not been defined in the normative acts of Latvia.

"The Republic of Latvia foresees criminal responsibility for crimes against humanity and peace, war crimes and genocide (chapter IX of the Criminal Code) and crimes against the State (chapter X), crimes which the International Convention of 1989 qualifies as the most characteristic crimes done by mercenaries.

"Any person can be held responsible for committing any crime foreseen in the Criminal Code if it is committed in the territory of Latvia. Article 4 of the Criminal Code foresees the circumstances in which the Republic of Latvia can bring to trial a person who has committed a crime outside of the Latvian territory. By such a legal way the Republic of Latvia states a strong position for the protection of humanity and peace around the world."

12. In a letter dated 2 August 2001 the Permanent Representative of the Republic of Panama to the United Nations Office at Geneva replied to the questionnaire sent by the Special Rapporteur as follows:

"(a) There is no information indicating the recruitment , financing, training, assembly, transit or use of mercenaries in the territory of the Republic of Panama;

"(b) There is no information indicating the participation of Panamanian nationals as mercenaries in acts against the sovereignty of other States or the exercise of the right of other peoples to self-determination, or in violations of human rights;

"(c) No information is available on mercenary activities in the territory of another State from which action could be taken affecting or that might affect the sovereignty of the Republic of Panama. We cannot exclude the possibility that an armed movement in the neighbouring Republic of Colombi . might attempt such action;

"(d) We have no information on the participation of mercenaries in the commission of internationally wrongful acts in the Republic of Panama;

"(e) The Republic of Panama is not yet a State party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. However, the competent national authorities have recently expressed the view that Panama should accede to the Convention [see below for information on the international treaties to which Panama is party];

"(f) To enhance the international treatment of the topic we suggest:

(i) Establishment of effective mechanisms for international cooperation for the purpose of exchanging information on mercenary activities (database). Establishment of a practice among States of providing early notification of the existence of mercenary activities, not only to

the State affected or the State of which the mercenary is a national, but to all States. In this regard we suggest the creation of a body within the United Nations system, to function as a centre for the coordination and subsequent dissemination of such information;

(ii) In our view the definition contained in the 1989 International Convention is adequate."

13. In a letter dated 17 September 2001 the Permanent Representative of the Republic of Azerbaijan to the United Nations Office at Geneva replied as follows:

"Under article 114 of the new Criminal Code of the Azerbaijan Republic, which entered into force on 1 September 2000, the recruitment, training, financing or other material support to mercenaries and the use of mercenaries in conflicts or military operations constitute a criminal offence;

"Under the same article, such actions committed by an official using his official position or in respect of minors constitute a criminal offence. The participation of a mercenary in a conflict or in military operations is punishable under the same article of the Criminal Code;

"Under the said article, actions connected with the planning, preparation, initiation, or conduct of military operations during a period of conflict are considered to be war crimes. 'Mercenaries' means persons who are not citizens of a State participating in an armed conflict and in military operations, as well as persons who have not been directed to perform official duties, but are acting for the purpose of obtaining material reward."

14. In a note verbale dated 26 October 2001 the Permanent Mission of the Republic of Peru stated:

"A report (460-2001-INI-1704) by the Office for Oversight of Security Services, Arms, Munitions and Explosives for Civilian Use of the Ministry of the Interior (DICSCAMEC) states that the Office for Oversight of Private Security Services oversees and monitors the activities of civilian private security services. In this regard, with the aim ensuring the suitability of such services, a model is being designed to create an occupational profile for individuals engaged in security services, with due regard for respect for human rights. Thus, any natural or legal person authorized to offer security services has commitments and obligations vis-à-vis DICSCAMEC under its private security services regulations. Private security companies hire individuals with military and/or police backgrounds as they are considered suitable for security functions. They have a group of instructors trained in self-defence and military skills. They also have a group of professionals, lawyers, psychologists, etc., to provide technical and administrative support (...);

"The Human Rights Office of the National Police Headquarters indicated in a report (75-2001-EMG-PNP/DIRDEHUM) that a number of military personnel have been on a 'combat techniques' course: six officers in April 1998; seven in October 1998; a junior officer in April 1999; seven officers and two junior officers in May 1999; two junior officers in June; four officers and two junior officers in October and a civilian employee in December 1999. This provides specialist training. It would be unwise to reach the conclusion that personnel who have been through the course might engage in covert military activities, as their overt activities provide no such indications. Lastly, the national police force has no elite 'Zeus Group' among its units. The national police have no record that any instruction has been given in attack techniques to prepare for residential raids or assaults on vehicles, or in the use of sophisticated weaponry that would suggest preparations for acts of violence that could threaten human rights. Neither has it been possible to establish the presence in Peru, between 1997 and 1999, of Israeli officers to provide training in defence and combat techniques to the so-called 'Zeus Group'.

"Still less has it been determined that such a supposed elite force would have been tasked, among other things, with protecting and ensuring the personal safety of the then principal adviser to the National Intelligence Service, Vladimiro Montesinos Torres."

15. The Special Rapporteur again wrote to the Government of Peru on 6 December 2001 requesting further clarification. It would appear that the government offices consulted had understood the Special Rapporteur's request for information as charging units of the national police with mercenary activities. This is not at all the case. The reports received by the Special Rapporteur refer to allegedly illegal activities by former presidential adviser Vladimiro Montesinos in connection with the possible contracting of mercenaries of Israeli origin, acting unlawfully and with payments and disbursements of money of unknown origin. The mercenaries reportedly trained selected military and police personnel outside official procedures, so as to form a personal guard for the former adviser, in violation of legality. It is this extreme case that the Special Rapporteur wishes to have information on. The Special Rapporteur is aware that the alleged activity would have taken place outside the law, in violation of current procedures and in all likelihood without the knowledge of the official commands responsible for the regular activities of military and police personnel.

II. FIRST MEETING OF EXPERTS

16. In compliance with resolution 54/151 of the General Assembly, of 17 December 1999, and 2000/3 of the Commission on Human Rights, the Office of the High Commissioner for Human Rights organized the first of two meetings of experts on the subject of mercenaries which were convened to study the forms currently taken by mercenary activities and to propose recommendations for an updated legal definition of the concept of mercenary.

17. The meeting was held in Geneva in the last week of January 2001 and was attended by eight invited experts from various regions and by the Special Rapporteur. The detailed and extensive analysis comprised aspects relating to the development of mercenarism over time, the

means employed by mercenaries, the most visible cases of such activities, the problems raised by the current definition of a mercenary under international law and ways of strengthening the United Nations in pursuing its aim to put an end to mercenary activities throughout the world.

18. The progress made at the first meeting of experts suggests that the second meeting should be planned without delay, perhaps for the second week of May 2002. The agenda should include the following items: clarification and formulation of a proposed legal definition of a mercenary; possible links between terrorism and mercenary activities; and the question of private military security companies operating in the international market offering services with mercenary personnel. A final topic would cover the consequences of the entry into force of the International Convention against mercenary activities.

19. This new agenda would complement the subjects addressed at the first meeting which included study of the background to the approach of the United Nations to the phenomenon of mercenaries; the state of international legislation on that subject, with special emphasis on article 47 of Additional Protocol I to the Geneva Conventions, regional legislation, particularly the Organization of African Unity Convention; national legislation and evaluation of the means used to implement existing legislation.

20. The analysis of the international definition of mercenaries was rightly given particular emphasis, also bearing in mind aspects relating to the legal framework of the issue and the difficulties of considering the various forms taken by the mercenary component. The meeting also addressed case studies such as the presence of mercenaries in Africa and the national cases of the Russian Federation and Colombia.

21. The report of the meeting is of great importance, and the Special Rapporteur would like to point out that the meeting served to emphasize that mercenary activities have increased and diversified, thereby exacerbating the problem of the lack of an appropriate legal framework which would not only contain in its definition the various forms taken by mercenary activity but from which punitive standards would be derived. The meeting also agreed on the need to expand the mandate of the Special Rapporteur, bearing in mind the violations of human rights resulting from such activities as illicit arms trafficking, drug trafficking, terrorist acts and other unlawful acts committed with the participation of mercenaries.

22. It should also be pointed out that the meeting of experts spent some of its time discussing the considerable increase in private security companies offering services in the military field. The experts were not opposed to the operation of such firms on the international market, recognizing, in particular, that they were efficient firms offering a wide range of services. However, the experts agreed in stating their disapproval of the participation of such firms in armed conflicts through mercenary units forming private armies. In that connection they pointed out that States had an obligation to exercise control so as to prohibit security firms from participating in armed conflicts, creating private armies, engaging in illicit arms trafficking, being involved in the illegal extraction of natural resources and, in that context, employing mercenaries.

23. Another point the Special Rapporteur would like to stress is that the experts did not feel that mercenary activities should be considered solely in connection with situations impeding self-determination. That is, of course, one of the rights that mercenaries violate, but there are other violations of human rights and international humanitarian law that should also be considered. The experts tended to see mercenary activity as a criminal act that could result in grave violations of the human rights of those affected by their actions.

24. Lastly, the group of experts accorded special importance to a systematic review of the definition of a mercenary, noting that the elements in a new or broader definition of a mercenary should include motive, purpose, payment, type of action and nationality. They also said that the definition should leave open the possibility of a connection between the mercenary act and other crimes, such as terrorism, arms trafficking and organized crime, in which mercenaries might be directly or indirectly involved.

III. MERCENARY ACTIVITIES IN AFRICA

25. One of the chief motives for creating the function of Special Rapporteur on the use of mercenaries was the intention of the United Nations to contribute to the effective exercise of the right of the African peoples to self-determination. In this connection the Special Rapporteur wishes to draw the attention of the Commission on Human Rights to the observations he made recently before the Third Committee of the General Assembly on the armed conflicts affecting Africa. Unfortunately, 14 years later, peace continues to elude many of the peoples of Africa. In many parts of the continent armed conflicts, sometimes of regional scope, are destroying the lives of thousands of Africans. Mercenaries are involved in many of these conflicts, through training contracts, direct participation in combat or involvement in the illicit trafficking that proliferates in areas affected by armed conflict.

26. The end of the cold war and of the apartheid system which used to be major threats to the freedom of peoples who had recently achieved independence, has not, as hoped, meant an end to confrontations and conflicting interests in Africa. Instead, there has been serious social and political disintegration accompanied by armed conflict. The facts testify to serious situations, deterioration of the nation State, grave crises threatening government stability and dogged struggles for the control of rich natural resources, including petroleum and mineral deposits. Wars are being fought for control of rich diamond deposits. Diamonds are a factor in the ongoing conflicts in Angola, the Democratic Republic of the Congo, Liberia and Sierra Leone and the developing conflict in southern Guinea.

27. In Côte d'Ivoire, hundreds died in October 2000 as a result of street violence following the presidential elections, when the leader of the military junta, General Robert Guei, suspended the vote recount that was going in favour of his opponent, Laurent Gbagbo. Hundreds more died in the Central African Republic following a failed coup attempt by the former dictator, General André Kolingba, in late May 2001.

28. Through the Revolutionary United Front in Sierra Leone, Liberia controls diamond production in Sierra Leone and is benefiting heavily from smuggling precious stones. Its smuggling activity enables the Revolutionary United Front to purchase arms, which fuel the continued conflict, despite the signing of ceasefire agreements. Liberian President

Charles Taylor and the Front are also financing and arming the group known as the Rassemblement des Forces Democratiques de Guinée, which aims at deposing Guinean President Lansansa Conté.

29. Since August 2000, the combined forces of the Liberian army and guerrilla fighters of the Revolutionary United Front have made forays to attack refugee camps in the south of Guinea in pursuit of members of the Liberian Ultimo-K movement, which is opposed to President Taylor. In addition to infantry, the attacks have been carried out with helicopters and heavy artillery.

30. The long series of armed conflicts on the continent involving a mercenary element shows that the exercise of the right to self-determination by the African peoples, or for that matter their control over their own natural resources or the rational utilization of them, is by no means assured.

31. The problems in Africa have only worsened, particularly in the western portion of the continent, rich in high-quality diamonds and in mineral and petroleum resources, which arouse the greed of unscrupulous politicians, merchants operating in the global market and members of criminal organizations who enrich themselves by plundering and smuggling gems and precious stones. As might be expected, mercenaries are no strangers to these criminal activities.

32. In his earlier reports the Special Rapporteur mentioned the involvement of mercenaries in armed conflicts in Angola, Chad, Liberia, Mozambique, Namibia, Rwanda, Somalia, Sudan, what was then Zaire, Zambia and Zimbabwe. The Special Rapporteur also discussed the political instability, nearly always accompanied by armed violence, that afflicted Benin, Botswana, Burundi, Cameroon, Comoros, Djibouti, Lesotho, Niger and Togo and the use of mercenaries by the racist regime of South Africa. The apartheid regime used to resort to mercenaries to destabilize political regimes considered to be socialist or unfriendly Governments and to attach the leaders of the African National Congress, an example being the assassination of Chris Hani by a Polish mercenary in April 1993.

33. The Special Rapporteur was informed that a South African citizen, Johan Niemoller, who was accused of having helped to plan, when he was a member of the apartheid regime death squad known as the Civil Cooperation Bureau, the assassination of Anton Lubowski, a member of the South-West Africa People's Organization, was seen in western Europe recruiting mercenaries to fight alongside the União Nacional para a Independência Total de Angola (UNITA). Niemoller was recently sentenced to a conditional two-year prison term, and a fine of 100,000 rand by the Krugersdorp court in South Africa for smuggling diamonds brought out of Angola illegally and shipped to Antwerp via South Africa. The value of the contraband was in the millions. At the same time, he supplied weapons to UNITA. Niemoller is also leader of the extreme right-wing South African group, Die Volk, allegedly involved in stealing weapons from South African barracks in 1998.

34. The conflict in Angola, fed by the illegal exploitation of its diamonds and other natural resources, continues to affect the civilian population of the country and threaten regional peace

and stability. The ceasefire agreements and sanctions and embargoes in place are not observed. It seems necessary for the Commission to reiterate its commitment to the Angolan people that their right to self-determination will be guaranteed, as will the sovereignty and territorial integrity of their State.

35. The Special Rapporteur's reports show that those conflicts revolved around the exercise of the right to self-determination of the African peoples. Today, however, the conflicts appear to revolve around a different problem, namely, control of natural resources such as petroleum, uranium, magnesium, bauxite and, above all, diamonds and other precious stones. Greed to possess them is now the chief motive for destabilizing legitimate governments, arming rebel groups and inciting internal conflicts. Those who, from Europe, control the markets in precious stones, particularly gemstones and diamonds, are not uninvolved in these conflicts.

36. Liberia's involvement in the illicit traffic in diamonds has led to the imposition of trade sanctions against that country, including those adopted by the Security Council in its resolution 1343 (2001) of 7 March 2001, which went into effect on 7 May 2001.

37. It is estimated that diamonds worth US$ 1.2 million are brought out of Angola illegally each day. UNITA has been trading diamonds for arms purchased from Eastern Europe by way of Togo, Israel (Tel Aviv) and the United Kingdom (London). With money obtained from exporting to Antwerp diamonds mined in northern Angola, UNITA buys weapons in Bulgaria. The proceeds of diamond trafficking, estimated at between US$ 3 and 4 billion, have enabled UNITA to build up its armed units and strengthen its combat positions by hiring mercenaries. The Special Rapporteur has pointed out on earlier occasions that there is a need to correct serious flaws in the system for monitoring the sanctions imposed on UNITA by the United Nations and the prohibition on the mining and selling of diamonds in the areas controlled by UNITA, which have been in place since 1998. Despite that prohibition, it appears that Canadian stock exchanges continue to list the stock of firms that operate diamond mines in the areas controlled by UNITA.

38. The Antwerp market is under strong suspicion of benefiting heavily from this illicit diamond trade, which amounts to several billion dollars annually. As mentioned above, the diamonds are reportedly sent to Antwerp from Angola via Togo, Tel Aviv and London. The mercenaries involved in the traffic are said to be recruited in London. It is said that the Angolan conflict, which has worsened since 1998, when UNITA ceased to comply with the Lusaka Protocol, could not continue if the illicit traffic in diamonds were stopped. In May 2001, UNITA kidnapped 51 boys and 9 girls during an attack against the northern town of Caxito that left more than 200 people dead or missing. The sanctions and embargo imposed by the organization have had no further impact in practice. Virtually no shipments of Angolan diamonds have been intercepted.

39. Diamonds are also a key factor in the armed conflict in Sierra Leone. Despite the formal ceasefire, Revolutionary United Front combatants are still armed, still control important diamond-mining areas and still engage in pillaging and commit terrorist attacks - such as the renewed attack on Freetown in May 2000 - and violations of international humanitarian law. Here, again, there are foreign mercenaries involved in selling weapons to the Front and trafficking in diamonds.

40. In this situation, there should be no let-up in efforts to investigate and suppress illicit trafficking in diamonds and arms and the involvement of mercenaries in such trafficking. The Revolutionary United Front continues to use its control over diamond mines to finance its activities, which in the past few years have included the large-scale and systematic commission of some of the worst crimes the world has witnessed. The international community must not remain indifferent to these violations of the most basic human rights, but must investigate the possible complicity, by act or omission, of those who benefit from the illicit trafficking.

41. In that regard, it should investigate the stance of the diamond producers, diamond exchanges and associations of diamond manufacturers in relation to Angola, Liberia and Sierra Leone, as well as the firms and organizations that participate in the illicit or undercover trade in diamonds, precious stones and petroleum. It should determine their responsibility for the continuation of the armed conflicts that afflict Africa and the resulting violations of human rights and international humanitarian law. In this regard, valuable work is being done by non-governmental organizations such as Amnesty International, Doctors Without Borders, Partnership Africa Canada, Human Rights Watch, Intermón, International Action against Hunger, International Alert, Médicos del Mundo and Medicus Mundi Internationalis.

42. It is hard to believe, as some diamond manufacturers and merchants allege, that only 4 per cent of the world trade in rough diamonds, which amounts to US$ 7 billion, is illicit in origin. In the absence of adequate, effective controls, it must be assumed that the percentage is actually much higher. In this context, the Special Rapporteur welcomes the recent South African Kimberley Process initiative, which seeks to establish an international system for the certification of diamonds from countries at war ("blood diamonds"). The aim is to establish a certification committee and a tracking and oversight board. In addition, the South African Diamond Board has established an office in Kimberley, considered a crossroads in diamond trafficking, to determine provenance. It is claimed that many diamonds illegally brought out of zones controlled by UNITA are placed with certificates of origin indicating the Republic of the Congo or Zambia.

43. The armed conflicts affecting Angola, Liberia and Sierra Leone are not the only conflicts on the African continent. Other countries, such as Guinea, suffer from instability and the Congo is ravaged by war. Particularly noteworthy, however, is the expansion of illicit trafficking, particularly arms trafficking, which is on the rise in all regions. Unscrupulous dealers thus benefit from the scant resources available for African development.

44. Forty-one years after the Democratic Republic of the Congo gained its independence, the civil war which besets the country, and in which other African States are involved, is costing the country 80 per cent of its resources. Troops from Angola, Namibia and Zimbabwe support the Government of President Joseph Kabila, while forces from Rwanda and Uganda continue to back the rebels, chiefly the Movement for the Liberation of the Congo, led by Jean-Pierre Bemba, and the Congolese Rally for Democracy, led by Adolphe Onusumba. The ceasefire agreed to in 1999 has been violated repeatedly. On the frontier with Uganda, ethnic classes between Lendu and Hema groups continue, the latter being supported by Ugandan forces.

45. Notwithstanding the Lusaka Ceasefire Agreement, there is continued fighting in the eastern part of the country. The withdrawal of Namibian forces is a step towards the withdrawal of all foreign troops from the country, in accordance with Security Council resolution 1304 (2000). Nevertheless, the cities of Kindu and Kisangani have not been demilitarized and the illegal exploitation of the country's natural resources, which are still being used to finance fratricidal warfare, continues.

46. The presence of mercenaries in the Congo is not new. Recent studies have confirmed that Belgian, French and South African mercenaries were recruited and hired to fight side by side with the secessionist forces of Katanga led by Moise Tshombe, and that Belgian mercenaries participated in the torture and subsequent assassination of Patrice Lumumba, the first Prime Minister of the Congo. These foreign elements must be demobilized and surrender their weapons to the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), and then leave the country, with a full guarantee of their physical safety and their lives.

47. The Special Rapporteur has been studying the nature of the conflicts that affected and continue to affect Africa and proposing a global policy to safeguard the life, personal integrity, freedom and safety of individuals and ensure respect for the sovereignty of African States. The Special Rapporteur considers it advisable to continue the course mapped out in the report of the panel of experts established pursuant to Security Council resolution 1237 (1999) on the situation in Angola (S/2000/203) and by the panel of experts established by the Security Council Committee pursuant to resolution 1132 (1997) concerning Sierra Leone (S/2000/756). Within this context, he stresses the need to respect the right of the peoples of Africa freely to decide their future, their political systems and the rational use that they wish to make of their resources. Otherwise, armed conflicts, together with hunger, poverty and disease, will cast their shadow over millions of Africans, threatening them like a deadly plague.

IV. CURRENT STATUS OF MERCENARY ACTIVITIES

48. Mercenary activity is a worldwide phenomenon. It is not related solely to problems of political instability or a wish to aggravate such problems so as to benefit from the exploitation of natural resources in certain States. The mercenary, as an individual, in common with mercenarism as criminal conduct involving a State or organization making use of mercenaries for specific aims, meets the purposes of evil interests that can affect the right of a people to self-determination, the stability of a constitutional Government, peace in one region or public security and tranquillity in others, or the breakdown of the legal order through illegal trafficking which severely disrupts life, liberty, health, physical integrity and positive social coexistence.

49. In this sense, mercenary activities are a recurrent theme worldwide, because they are found wherever there is fertile ground, whether armed internal or international conflict, a covert operation by a State or political organization against another State with the aim of destabilizing it, illicit trafficking with the aim of unlawfully obtaining large sums of money, or an act of terrorism intended to sow panic and intimidation at the local or international levels. No significantly violent act in contravention of international law is alien to mercenary activities; such an act may, and has been, a component of such activities. It is thus no exaggeration to note the regrettably recurrent and worldwide nature of mercenary activities.

50. Mercenary activities have survived the end of the cold war, but methods have changed: there are still individual mercenaries who enlist to fight in internal armed conflicts within a country, just as there are mercenaries within today's international military security companies, or who engage in their trade to participate in illegal trafficking in drugs, diamonds and weapons. Yet although the link, the manner and the nature of the activity in which mercenaries participate may change, that does not change the mercenary status of those who take part in illicit acts, offering and selling their professional skills for pay, well knowing that it is not for a noble cause, but to kill and destroy outside any licit or ethically permissible context.

51. In recent conflicts in Africa, Asia and Latin America, there has been recourse to the recruiting and hiring of mercenaries, owing to their military experience and combat effectiveness. In many cases, such persons could not be categorized as mercenaries if the requirements established by article 47 of Additional Protocol I (1977) to the 1949 Geneva Conventions were applied cumulatively and concomitantly. The Special Rapporteur nonetheless considers them mercenaries, despite the fact that the existing legal definitions are vitiated by gaps and juridical shortcomings and fail to take into account situations and activities that are mercenary in nature. These shortcomings have been made good to some extent with the entry into force of the 1989 International Convention.

52. In general the new methods employed by mercenaries escape the few prohibitions that domestic legislation and international law place on mercenary activities. Nevertheless these activities cause serious harm to the persons and peoples suffering their effects; the evils they produce not only constitute human rights violations, those responsible are professionals, specifically hired for their effectiveness in causing harm. The United Nations should therefore devote time and resources to the study and analysis of the various ways in which mercenaries are used and act and of those who employ them, while recognizing that this is not merely a legal question of definition, but also a question of actions and situations that affect life, security and international peace.

53. In this vein the Commission on Human Rights has confirmed in its recent resolutions that the presence of mercenaries should be studied and identified in connection with various criminal activities. This consideration emphasizes the risk posed by the use of mercenaries for the perpetration of various unlawful acts and the violation of human rights and international humanitarian law, even in cases that may not be directly connected with self-determination. In accepting the suggestions made by the meeting of experts, the Commission thus strengthened the United Nations condemnation of mercenary activities.

54. Another aspect of mercenary activities today relates to the connection with acts of terrorism. The following section of the report deals with this issue. It should be noted that while the link exits, it is not a systematic and permanent relationship, but, rather, opportunistic, circumstantial and ad hoc, although the effect is lethal and extremely harmful.

55. Indeed an analysis of cases shows that some terrorist attacks are carried out by militants indoctrinated and fanaticized with fundamentalist ideological concepts who view recourse to terrorism as a "legitimate" means of achieving certain objectives. Underlying many terrorist attacks is a fundamentalist conception that aims at collective intimidation by sowing fear and panic. However, there also exist terrorist acts that are simply the expression of interests of

specific Governments, political organizations or entities which, in the name of the struggle against certain regimes, do not hesitate to resort to terror. Such entities resort to the use of mercenaries to commit terrorist acts.

56. Such mercenaries are not motivated by any fundamentalism, but rather by the payment which they receive for committing unlawful acts. Their experience, training and effectiveness in destroying and killing render them useful for carrying out terrorist acts. In other words, the act in itself remains by nature terrorist but at the same time takes on a mercenary character owing to the agent executing it.

57. The Special Rapporteur feels that when investigating a terrorist attack the possibility that it has been committed by a mercenary must also be examined. The connection between terrorist act and mercenary activity cannot be ruled out.

58. In general, mercenary activity is not spontaneous. It usually occurs as a result of conspiracy to commit crimes. It is also commonly associated with other unlawful activities such as traffic in persons, drugs and arms. Some armed conflicts have broken out because of the existence of weapons markets that encouraged them, while others are unnecessarily prolonged for the same reason. Mercenaries are present in such traffic. Recourse is had to mercenaries for arms shipment, whether as pilots, co-pilots, flight engineers or providers of armed security. They are also hired to act as dealers in the field or as instructors in the use of the war material sold.

59. Those trained in the use of armaments are usually military personnel but may also be members of guerrilla organizations or paramilitary groups with no significant military preparation. In illegal arms traffic, payment is effected in cash, but may also be in kind. In recent conflicts, weapons have been paid for with diamonds and other precious stones, petroleum or drugs, as can be seen in the cases of Afghanistan, Angola, Colombia, Liberia and Sierra Leone. The mercenary agent plays his part in such traffic without any concern as to what use will be made of the weapons or what damage they may cause. The magnitude of the phenomenon is astonishing, and the international community is not adequately protected against it. Efforts should be made to elaborate regulatory instruments for effectively thwarting that activity and to strengthen the political will to put an end to such illicit traffic.

60. Lastly, the diversification of and growth in mercenary activities has been possible because some States have adopted an indifferent, unheeding and even permissive attitude towards mercenary activities. To be absolutely clear on this point, there is no uniform posture on the part of Member States of vigorously combating and completely prohibiting mercenary activities in all their aspects.

61. Penal legislation in most Member States suffers from serious gaps with regard to the treatment of those who make available for pay their professionally skilled services for the performance of acts that can seriously harm substantive and basic personal right, affect institutions and even involve terrorist attacks in States, sowing destruction, death and panic, with the aim of inflicting damage on a Government on political, ideological, religious or other pretexts. The consequences of these legal lacunae are twofold. On the one hand, a feeling of permissiveness that has allowed the use of mercenaries for various activities that under legal

regimes offering effective protection for human rights and respect for self-determination should be severely restricted or prohibited. On the other hand, some States display an interventionist tendency in the context of their regional or hemispheric strategies, with covert operations by their intelligence services which result in criminal attacks on individuals and countries. The commission of such acts has frequently involved the recruitment, training, financing and use of mercenaries. Empirical verification of this type of mercenary activity is offered by instances of countries which have suffered aggression, to which the Special Rapporteur has referred in earlier reports.

62. The result of this situation is that broad impunity facilitates the continuation of mercenary activities. This is a serious and verifiable fact. A number of questions arise: how many mercenaries, publicly known for their acts, have ultimately been tried and sentenced? How often has mercenary status been taken into account as an aggravating factor? How many States have prohibited and punished interventionist, in some cases criminal, activities by their intelligence services? The reply must be given by the courts and by States, but it is the obligation of the Special Rapporteur to note that in very few instances only have mercenary activities been identified and recognized as such or mercenaries been tried and sentenced. This situation is highly irregular and works to the benefit of mercenaries and those who encourage their activities. Express condemnation of mercenarism and of mercenary activities necessitates, in the context described, a genuine commitment by all States to combat and severely punish this activity, which directly affects the enjoyment of human rights and self-determination.

V. TERRORISM AND MERCENARY ACTIVITIES

63. The terrorist attacks of 11 September 2001 against the World Trade Center in New York, the Pentagon in Washington, DC, and the hijacking of the aircraft that crashed in Pennsylvania deserve the most stringent and energetic condemnation and the most severe punishment for those responsible for the planning, financing, preparation and execution of these terrorist acts. The treachery and evilness evident in the necessarily long and meticulous planning of the operation, the hatred evident in the attempt to inflict the greatest degree of harm possible on a people and the evil execution which sacrificed thousands of innocent lives to the objective of breaching security and attempting to humiliate as much as possible a world Power such as the United States of America mean that this was the most serious terrorist attack in the history of mankind, both in terms of the death toll and the fact that no escape was possible from the perpetrators, who, in carrying out such bloody provocation, were in effect making a declaration of war and creating a situation that would inevitably affect the world order and world peace.

64. Incalculable harm was produced. No cause can be invoked to justify it. Attribution of responsibility for the act to this or that policy of the United States is a cynical and opportunist argument. In international relations and power strategies employed by Powers there are always differences, disagreements, questionings of global asymmetries and injustices which in the interplay of strategic interests at times affect entire regions and peoples. But none of these situations can legitimately be invoked when it leads to indiscriminate violence and criminal terrorism that kills, destroys property and seeks to turn peoples' lives into a perpetual torment of fear and terror.

65. Any act of terrorism is a mistaken response and a profound error. Terrorism cannot be good or justifiable. No one has the authority to conduct policies of terror, and the worldwide, vigorous condemnation of the terrorist attacks of 11 September should not only result in the severe punishment of those responsible but also foster the profound conviction that terrorist acts of all kinds must be extirpated, whether such acts are by States, as has frequently occurred in the past, or by any group or individual, acting in the name of false political, ideological, religious or other justifications.

66. We should also be quite clear that the growth in terrorist activities is due, at least in part, to an ineffectual response at the international level in combating terrorism in practice. The attacks of 11 September were foreshadowed by many attacks worldwide over the preceding 30 years or more. The United Nations has adopted more than 10 international conventions to combat terrorism, but it must be asked whether there has existed a common will on the part of States and enterprises and institutions of civil society to implement the security and monitoring mechanisms and intelligence policies that could have pre-empted the lengthy preparations for the terrorist acts.

67. The answer is that too much confidence has been placed in non-systematic security mechanisms. The reality of terrorist violence is otherwise. Violent organizations and their operatives have flourished owing to "innocent tolerance" on the part of Governments and the public, and have exploited the opportunities created by beneficial social coexistence, acquiring know-how that scientific progress makes available for the well-being of mankind, subverting it from this end and using it for destruction. Systematic observation of terrorism leads to one certain conclusion: wherever it has occurred, it has been at our expense, growing before our eyes and using for evil that which the innocent peoples of the entire world use in their day-to-day existences to live positively.

68. This brief analysis is fully borne out in this report by the Special Rapporteur to the Commission on Human Rights. Firstly, any act of terrorism is in and of itself an attack on human rights, which the special rapporteurs of the United Nations system have been appointed to protect and promote, and attacks on which we have an obligation to denounce and combat. Secondly, various United Nations resolutions, such as Security Council resolution 1373 (2001), invite cooperation, not only between States, but also between organizations of society in general and of course between United Nations bodies, agencies, machinery and experts so as to close ranks and work to avert, prevent and punish terrorism. Security Council resolution 1373 (2001) also makes reference to elements of terrorist activity that are related to the mercenarism which constitutes the Special Rapporteur's mandate, such as "transnational organized crime, illicit drugs, money-laundering, illegal arms trafficking, and illegal movement of nuclear, chemical, biological and other potential deadly materials" etc. (para. 4). All this confirms, as the Special Rapporteur has maintained, that close links may exist, and de facto have in the past existed, between terrorism and mercenary activities.

69. The Special Rapporteur, in his earlier reports, has noted that the presence of mercenaries is usually related to various criminal activities. It would be an error to exclude possible links between mercenary activities and terrorist acts. This is not a permanent or systematic relationship. Analysis shows that most terrorist attacks are the result of a profound and serious distortion of political, religious or psychological concepts which leads to denial of the absolute

value of life, freedom and solidarity. Indoctrinated and fanatical militants, trained to destroy, and previously stripped of the human sentiments of pity and compassion, serve as the tools. Or use may be made of professional mercenaries to either prepare or execute the terrorist act. It is clear, and recent events have proven, that behind many terrorist attacks lie erroneous conceptions, nurtured by hatred, that use any means and resort to collective intimidation. Further, whatever the terrorist motivation, those who plan and prepare terrorism seek effective and certain fatal effects. It is thus inherent in the logic of terrorism to consider the possible use of professional mercenaries for specific preparatory acts or to carry out the act itself.

70. This hypothesis applies to any terrorist group, for example, the fundamentalism attributed to certain groups, such as the Al-Qaida group founded by Osama bin Laden. The membership of this organization may be confined to fanatical individuals espousing a distorted religious or political ideology, but that does not mean that a group of this type does not seek the support of mercenaries for a particular kind of operation, such as that required in the preparation and organization of a large-scale terrorist act.

71. Yet this is not the only means of perpetrating terrorism; there are other motivations, generally economic or political, that impel Governments and organizations of various kinds to incorporate terrorist actions in their strategies. Analysis of covert operations, of assassination of political leaders and of illicit trafficking reveals that mercenaries are often used in such types of terrorist activity. The Special Rapporteur again points out that the experience gained by mercenaries and their effectiveness in destroying and killing make them useful in any criminal activity. That is, the nature of the act itself is terrorist, but it becomes mercenary by virtue of the agent carrying out the act.

72. In this line of thinking, when investigating a terrorist attack or the presence of terrorists in an armed conflict the possibility must be considered that mercenaries may be involved. It is clear that the mercenary is nothing more than a tool, a link in the commission of the crime, but the mercenary's professional training may be essential to the success of a single criminal act or one committed in the context of an armed conflict. Account must also be taken of the fact that terrorist violence is decentralized, fragmented, without a contextual identity throughout the preparation stage, and indiscriminate in its effects at the time it is carried out, all of which favours the hiring, training and financing of mercenaries so that it is they who are used for execution of the acts, acts planned and directed by government or non-government bodies. In any event, since the preparation of a terrorist act is long and complex, in each case consideration must be given to the possibility that some of the preparations may have involved hiring mercenaries with specialist skills.

73. It is widely known that in general terrorists construct secret and very extensive support networks. These networks must be unearthed and eliminated; it is there, submerged in everyday society, that terrorism hides. It is an underground but real world, which worldwide feeds on laundered money, drugs, arms bought from traffickers, and where a mercenary, hired for pay, can be the last link in the chain required by terrorist violence. If measures to avert terrorism are to meet with success, account must be taken of the variables referred to, including, of course, the measures envisaged against mercenaries, since that will help to counter terrorism.

74. With regard to the state of war which has existed in Afghanistan subsequent to 11 September, it will be recalled that the Special Rapporteur considered the irregular situation in that country, noting, in his most recent report to the Commission on Human Rights (E/CN.4/2001/19), that he had received information on the presence of military training camps, where it appeared that training was being given to mercenaries who were then sent to fight in armed conflicts such as those occurring in Chechnya, Jammu and Kashmir or in northern Afghanistan. Unfortunately the communications sent by the Special Rapporteur to the Government of the Islamic State of Afghanistan and the Government of the Russian Federation requesting clarification concerning mercenaries trained by the Taliban received no reply. This demonstrates the need for thorough investigations into possible links between terrorism and mercenary activities to be conducted in all cases. The Special Rapporteur could not maintain a priori that the terrorists in the Al-Qaida organization include mercenaries, but neither would it be correct to say that its members are exclusively religious fundamentalists or volunteers.

75. Al-Qaida, in common with other organizations engaged in terrorism, seeks a high level of effectiveness in the conduct of terrorist acts and their impact. An investigation should be conducted into whether during the preparations for the terrorist acts mercenaries were contacted, recruited or used. This is an organization with deep pockets possessing the necessary resources. And, as the Special Rapporteur has maintained over the years, a possible connection between terrorism and mercenary activities cannot a priori be ruled out.

76. In circumstances in which terrorism shows indications of having refined its methods, the Special Rapporteur wishes to stress these links and the need to investigate not only individual mercenaries but all the support, operational and financial networks behind them. The Committee established pursuant to Security Council resolution 1373 (2001) should explicitly cover this aspect in its work. Similarly, it should remind all States of their obligation not to encourage any act which, directly or indirectly, could facilitate or authorize operations that might include terrorist acts, and of their obligation to prevent, investigate, and punish the use of their territory, the financing of mercenary activities and the establishment of networks.

77. Regrettably, vigorous action by the international community against mercenarism and mercenaries has thus far been lacking. Many have taken part in mercenary activities but have not been brought to justice. Of those brought to justice, many have been set free without punishment. Financial and tax havens, tools in the funding of mercenary and terrorist activities, continue to spring up on almost every continent without ever being seriously investigated. And powerful interests, protected by impunity, are involved. Mercenaries and terrorists have prospered with the lack of interest by major States in the international community, being protected in practice by this policy of "looking the other way".

78. The terrible events of 11 September 2001 show that it is high time to end this dangerous permissiveness and careful ambiguity. Mercenarism and terrorism must be clearly defined in national legislation, and mercenary status must be considered an aggravating factor in sentencing. But there are other areas in which we must move away from omissions and reluctance. The obligation of States to cooperate with investigations by other States affected by terrorist attacks, whether or not they involve mercenaries, must be recalled. Similarly, agreements must be concluded to facilitate prompt and immediate extradition, and there must be a general agreement to prohibit intelligent services from formulating or implementing strategies,

training personnel or participating in any activity, under the pretext of spying, obtaining information, destabilizing Governments, intervening secretly in internal armed conflicts, attaining specific political or economic aims and in general affecting self-determination, that might encourage, make possible or assist participation in terrorist attacks, however carried out.

79. Lastly, attention must be paid to the reprehensible presence and participation by mercenaries and their agents in criminal networks, such as international organized crime, trafficking in persons, illicit trafficking in weapons, explosives and drugs, money-laundering and financial havens, used by criminals and by terrorist organizations to amass and use the resources that allow them to carry out their criminal projects. Any investigation into terrorism or effective measures to combat it must cover these aspects.

80. Absolute clarity is essential so as to avoid unacceptable permissiveness. First and foremost any attempt to violate or fail to respect human rights in the name of combating terrorism more effectively must be avoided at all costs. Such an approach would lead to militarization across the world and embody serious dangers. Indeed it would differ very little from general, indiscriminate violence, interventionism and facile accusations without proof. We must not make the mistake of regarding critical opponents as supporters of terrorism, or of suspecting those who do not unconditionally align themselves with a specific anti-terrorist strategy of being sympathisers. To vigorously combat terrorism, yet to avoid falling into State terrorism, constitutes an imperative based on reason, ethics and the principle of respect for human rights.

81. There must be an end to the impunity that has protected terrorism and mercenaries who have committed or participated in terrorist acts. Yet before unilateral, on occasion inevitable responses, such as self-defence, are engaged in, the need for proportionality means that multilateralism must be strengthened. In this regard it is essential to reinforce the role of the United Nations and fully implement the provisions of Security Council resolution 1373 (2001). All such resolutions must be implemented effectively, in which connection the cooperation of all States is essential. The fight against terrorism requires true leadership by the Organization.

VI. PROBLEMS RAISED BY A LEGAL DEFINITION OF MERCENARISM

82. In this section the Special Rapporteur presents a set of conceptual elements already mentioned in his report to the General Assembly. These concern the current status of the legal definition of mercenarism, given the need to review and update a legal definition that would allow more effective action to eliminate mercenary activities and thus comply with the recommendations by the Commission on Human Rights and General Assembly.

83. Throughout history the term mercenary has been used to define, in a general sense, persons, conduct and outlooks far removed from the military sphere. The concept of mercenary has also been used, and continues to be used, simply to offend or discredit. It quickly became apparent, however, that from a legal standpoint there was need for a definition to determine who

was and was not a mercenary. The first attempt at a definition was made in article 47 of Additional Protocol I to the Geneva Conventions of 1949. The aim, however, of the provision was not to define the concept, but, rather, to establish to whom the status of combatant and prisoner of war should be applied.

84. Throughout history the following elements have been present in the concept:

(a) Financial considerations, the desire for profit, benefit or material private gain as motivation for participating in an armed conflict or concerted act of violence. This element excludes conscripts, recruited to perform compulsory military service, and those who are called up; nationals who enlist as volunteers to defend or fight for their country as members of the regular armed forces without being compelled to do so; and also foreign nationals who act out of humanitarian, ideological, political or religious convictions. The foreign nationals who went to Spain to defend the Government of the Republic against the coup d'état without any personal or material interest or those who joined the allied forces against the fascist regimes in Europe in the Second World War cannot properly be termed mercenaries;

(b) Not forming part of the regular armed forces at whose side the person fights or of those of the State in whose territory the concerted act of violence is perpetrated. This aspect excludes foreign nationals who are members of special vanguard units or foreign legions which have formally agreed to form part of a regular army as regular elements, in an act which may be assimilated to that of a foreign national who applies for and acquires the nationality of another country;

(c) Having been recruited and contracted for, and having effectively participated in, armed conflict as a combatant, or in armed, subversive or terrorist action, as an active participant. This excludes military advisers or counsellors;

(d) Traditionally, being a foreign national, that is not a national of the party being fought for; a criterion extended to not being resident in a territory controlled by a party to the conflict or of the State against which a concerted act of violence is perpetrated; and

(e) Payment, an objective and verifiable element defining the nature and status of the action. However, under international instruments currently in force the pay must be substantially in excess of that promised or paid to regular military personnel of similar rank and functions. In general these elements were reflected in article 47 of Additional Protocol I to the Geneva Conventions and the 1989 International Convention. It will be appreciated that these elements are, of necessity, cumulative; that is, it is not sufficient for one only to be present, all must be met. This makes it difficult to categorize someone as a mercenary. This difficulty makes it hard to implement the legitimate right to punish mercenaries.

85. It should be borne in mind, however, that Additional Protocol I to the 1949 Geneva Conventions is an instrument of international humanitarian law, the aim of which is to humanize, as far as possible, armed conflicts, and not to define what is meant by mercenary or who should

be considered a mercenary. The aim, rather, is to extend combatant and prisoner-of-war status to the greatest number of individuals, and to exclude such status only in specific exceptional cases, such as that of mercenaries.

86. The criteria of financial gain or profit or intent are easily accepted by countries with a Romano-Germanic legal tradition, but not by those with an Anglo-Saxon legal tradition. During his visit to the United Kingdom of Great Britain and Northern Ireland the Special Rapporteur understood that British jurists emphasize the commission of the act itself, whether crime or offence, and that the motivation to commit it is not the principal element. What is important is that the person killed, robbed or assaulted, that is, the act committed rather than the motivation. The reasons, whether emotional, financial or ideological, are less important than the fact that the act is committed.

87. Review of the legal definition of mercenary must focus on the aim and motivation so as to propose a sufficiently broad concept as to embrace the various criminal situations in which a mercenary component appears.

88. A further key element relates to the need to be a foreigner to be considered a mercenary. This ignores the significant phenomenon of nationals who act against their own country for remuneration from a foreign Power or organization. The Cuban authorities explained to the Special Rapporteur during his official mission to that country in 1999 that this was one of the main preoccupations of the Cuban Government with regard to the definition in Additional Protocol I and the 1989 International Convention. For 40 years Cuba had been the victim of acts of aggression and terrorist acts committed by its nationals based on foreign territory or acting in return for pay from foreign organizations based abroad.

89. If nationals are contracted for the clear purpose of being used as mercenaries, with the mercenary aspect hidden behind the fact that they are nationals, the standard applied should exclude nationality and focus on the mercenary nature of the act. Thus the question of the requirement of being a national of a country other than the country affected by the mercenary's activity must be reconsidered and analysed in greater depth, so that the definition lays more emphasis on the nature and aim of the unlawful act to which an agent is connected by payment. Further, if being a foreigner is a requirement or sine qua non for being considered a mercenary, it would suffice to obtain the nationality of the country being fought for to cease to be considered a mercenary. The Special Rapporteur noted this during his visits to the successor countries to the former Yugoslavia.

90. The Special Rapporteur trusts that these aspects will be further analysed at the second meeting of experts, to be organized by the Office of the High Commissioner in 2002. The first meeting of experts agreed on the need to analyse and discuss this requirement in more detail. While the definition contained in the international instruments in force was initially considered positive, as a first step, the tendency today is to view it as partial and incomplete, not applicable to new types of mercenary activities or the criminal responsibility of legal persons, such as private security and military consultancy companies, which contract mercenaries.

VII. ENTRY INTO FORCE OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES

91. The Special Rapporteur welcomes the entry into force of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly in its resolution 44/34 of 4 December 1989. The Commission on Human Rights had entrusted the Special Rapporteur, pursuant to his mandate, with keeping it informed of the signatures and ratifications of and accessions to the International Convention, and had repeatedly urged Member States to consider the possibility of prompt signature, ratification and accession. Ultimately, the International Convention entered into force on 20 October 2001, 30 days after Costa Rica, the twenty-second signatory, deposited its instrument of accession with the Secretary-General.

92. The International Convention expands on the definition of a mercenary contained in article 47 of Additional Protocol 1 to the Geneva Conventions of 1949, in particular with respect to those who are specifically recruited to participate in concerted acts of violence with the aim of overthrowing a government, or undermining in any other way the constitutional order of a State or its territorial integrity. Article 1 (2) of the Convention provides that:

> "2. A mercenary is also any person who, in any other situation:
>
> "(a) Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at:
>
> (i) Overthrowing a Government or otherwise undermining the constitutional order of a State; or
>
> (ii) Undermining the territorial integrity of a State;
>
> "(b) Is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation;
>
> "(c) Is neither a national nor a resident of the State against which such an act is directed;
>
> "(d) Has not been sent by a State on official duty; and
>
> "(e) Is not a member of the armed forces of the State on whose territory the act is undertaken."

93. It should be noted that for the purposes of the International Convention a serious offence is committed by any person who recruits, uses, finances or trains mercenaries, or attempts to commit such acts or is an accomplice in such acts or attempts.

94. The following States are parties to the International Convention: Azerbaijan, Barbados, Belarus, Cameroon, Croatia, Cyprus, Georgia, Italy, Libyan Arab Jamahiriya, Maldives, Mauritania, Qatar, Saudi Arabia (with reservations to article 17 (1)), Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay and Uzbekistan. A further nine States have signed the International Convention but have yet to ratify it: Angola, Congo, Democratic Republic of the Congo, Germany, Morocco, Nigeria, Poland, Romania and Yugoslavia.

95. Entry into force of the International Convention will facilitate pre-emptive cooperation among States, clearer identification of situations with a mercenary component, clear identification of the competent jurisdiction in each case, procedures for the extradition of mercenaries and effective trial and punishment of those responsible for the offence.

96. The Special Rapporteur will submit a proposal to the second meeting of experts that it should conduct an exhaustive analysis of the implications of the entry into force of the International Convention so as to be able to offer the Commission, at its fifty-ninth session, in 2003, more specific contributions regarding its content, implementation and impact.

VIII. CONCLUSIONS

97. Commission on Human Rights resolution 2001/3, adopted on 6 April 2001 at its fifty-seventh session, provides confirmation of the concern of the United Nations at the existence of mercenary activities that threaten the right of peoples to self-determination and their effective enjoyment of human rights. The text of the Commission's resolution confirms that such activities are adopting new forms, manifestations and modalities. In turn, the resolution adopted by the General Assembly at its fifty-sixth session confirms the condemnation of mercenary activities in all their modalities.

98. The terms of the renewal of the mandate of the Special Rapporteur on mercenary activities for a period of three years include consideration of cases of the use of mercenaries that threaten the right of peoples to self-determination as well as all new forms adopted to extend mercenary activities. The Special Rapporteur has undertaken his renewed mandate from the standpoint described in the preceding paragraph without prejudice to making respect for self-determination its central thrust.

99. The first meeting of experts convened by the Office of the High Commissioner for Human Rights in compliance with resolutions 54/151 of the General Assembly and 2001/3 of the Commission on Human Rights was a very useful forum for the in-depth study of the use of mercenaries and the serious harm caused to peoples that suffer from it. The final report of the experts (E/CN.4/2001/18, annex) includes substantive aspects relating to the need to develop an updated and satisfactory legal definition of mercenaries. It also contains aspects relating to the various ways in which the use of mercenaries affects self-determination and human rights. In that context, the experts regard mercenary activities as illicit and likely to lead to the violation on a massive scale of human rights among populations affected by such activities.

100. The situation of the peoples of Africa continues to deteriorate as a result of armed conflicts. Possession of natural resources is one of the causes of these conflicts, in which mercenaries are generally involved. This is true of diamonds and oil, which have excited the greed of unscrupulous politicians, traders operating in the global market, adventurers and criminal gangs that enrich themselves by plundering and smuggling gems and precious stones. Mercenaries take part in the plundering and carry out many of the criminal operations.

101. One of the most egregious attempts to exploit the riches of Africa involves UNITA in Angola. This rebel force is the biggest employer of mercenaries. In the territories under its control it extracts and sells unlimited quantities of diamonds, despite the United Nations embargo, and it uses mercenaries to smuggle diamonds to European markets, primarily through Antwerp. The proceeds of the illicit trade enable UNITA to continue the ward that is bleeding Angola dry.

102. Diamonds are also a key factor in the armed conflict in Sierra Leone. Despite the ceasefire, Revolutionary United Front combatants are still armed, still control important diamond-mining areas and still engage in pillaging, terrorist attacks and violations of international humanitarian law. As in other conflicts, mercenaries are involved in the diamond trafficking and the sale of weapons to the Front.

103. In both traditional and new forms of mercenary activity, the recruitment and hiring of mercenaries are facilitated by deficiencies in legal definitions. At the international level article 47 of Additional Protocol I of 1977 to the Geneva Conventions has proved inadequate. In turn, national legislation generally lacks provisions prohibiting mercenary activity.

104. The need to act more effectively against mercenary activities makes it advisable to determine when mercenaries are involved in connection with criminal activities that violate human rights and the rules of international humanitarian law. The United Nations should devote resources to study and analysis of the various means of using mercenaries and of their activities and of those who employ them, acknowledging that together with the legal definition of a mercenary there will be a need to establish legal definitions of crimes and punish those actions in which a mercenary component characterizes and defines criminal activity.

105. Mercenary activity often comes about as the result of a conspiracy to commit such crimes as trafficking in persons, precious stones, drugs and weapons. Some armed conflicts have erupted because there exist markets in weapons to fuel them. Others have been unnecessarily protracted for the same reason. Mercenaries are actively involved both in arms trafficking and in training others in the use of the weapons sold.

106. The terrorist violence of 11 September 2001 against facilities and human life in New York, Washington and Pennsylvania not only merits the most vigorous condemnation but demonstrates that despite the many international instruments against terrorism, this scourge has

grown in its capacity to destroy and violate human rights. Regrettably, the possibility that mercenaries, hired especially for their professional skills, may be recruited in criminal acts in preparation for or execution of a terrorist attack cannot be excluded. Accordingly the connection between terrorist attacks and mercenaries must never be excluded a priori.

107. The need to combat terrorism more effectively makes advisable closer cooperation between States and establishment of coordination mechanisms such as those contained in Security Council resolution 1373 (2001). The resolution refers to elements of terrorist activity which are linked to mercenarism in the sense that the latter may increase the capacity of terrorists to kill.

108. The first meeting of experts on mercenary activities made important contributions towards a better legal definition of the subject. Among those contributions was the notion that the terms to be defined should comprise not only the mercenary as an individual, but also mercenarism, a broader concept encompassing the responsibilities of the States and organizations concerned in mercenary activities. Such activities may be a factor in either international or internal conflicts; their scope is broad and can affect self-determination and human rights in a variety of ways. Lastly, a mercenary may be characterized as a person knowledgeable in military matters or in the use of firearms who places that knowledge and experience at the service of a third party who hires the person to undermine the exercise of self-determination in a given State, destabilize its legitimate government, destroy infrastructure or harm persons through acts of terrorism, and possibly to participate in illicit trafficking. The distinguishing factor is payment, which defines the nature of the act. A mercenary is a criminal agent who is paid to commit crimes and undermine human rights.

109. Although up to now the tendency has been to assume that an individual must be a national of a country other than that in which he or she is operating in order to be considered a mercenary, that notion is currently under review. It is felt that the nationality requirement should be set aside when it is clear that nationals are being paid to act against their own country, with the result that those who are, in fact, acting as mercenaries, avoid being labelled as such.

110. The International Convention against mercenary activities has entered into force, and has been signed by 22 States. It should in principle facilitate pre-emptive cooperation among States and lead to more effective results in eliminating mercenary activities. It would, in any event, be desirable for a larger number of States to accede to it.

IX. RECOMMENDATIONS

111. In view of the advances and proposals that emerged from the first meeting of experts on mercenary activities, it is recommended that the Commission on Human Rights, together with the General Assembly in its resolution, reiterate the need for the Office of the United Nations

High Commissioner for Human Rights to convene the second expert meeting pursuant to General Assembly resolution 54/151, so that the experts can deepen their analysis and formulate specific proposals for a legal definition of mercenaries and other related matters.

112. In view of the text of Commission on Human Rights resolution 2001/3, it is recommended that the Special Rapporteur should continue to study mercenary activities as a means of impeding the exercise of the right of peoples to self-determination but should also take into account other situations in which mercenaries are involved, including illicit trafficking, terrorism, the use of mercenaries by private security companies to intervene in the internal affairs of States and organized crime.

113. It is recommended that the Commission on Human Rights should reaffirm its full support for the self-determination of the African peoples and their right to live in peace, to benefit from the development that can result from the rational use of their own natural resources and to have their legitimate governments recognized, respected and stable, and in that regard it should condemn the mercenary activities frequently organized with the aim of undermining the rights of the African peoples.

114. It is also recommended that the Commission on Human Rights should contact States in which diamond-mining companies, diamond exchanges and associations of diamond merchants operate to seek their active cooperation against illegal trafficking in diamonds and other precious stones in connection with which unscrupulous business practices are employed in the exploitation and sale of diamonds. This illicit traffic is responsible for the persistence of armed conflicts in Africa, with consequent violations of human rights and international humanitarian law. It is well known that mercenaries are involved in the illicit activities carried out by such firms.

115. It is recommended that, together with condemnation of terrorism and efforts to eliminate it, attention should be paid to the need to investigate and follow up on possible connections with mercenaries in the preparation and execution of terrorist acts. This should be done in both United Nations resolutions and in government and legislative acts by States parties so as to improve the effectiveness of pre-emptive action and punishment of terrorists and those associated with them in any capacity in the planning, preparation and execution of terrorist acts.

116. In view of the imperative need in the interest of human security to eradicate terrorism in all its manifestations it is recommended that implementation of Security Council resolution 1373 (2001) should include aspects relating to possible connections between mercenaries and terrorism, as well as to covert operations and secret activities by intelligence services which might contract mercenaries to commit acts which may be assimilated to terrorist acts.

117. In view of the many ways in which mercenaries are used in unlawful acts, it is recommended that special attention should be paid to combating their involvement in illicit arms trafficking, which serves to fuel and prolong armed conflicts. With his experience the mercenary

agent enhances the frequency and volume of illicit arms deals. That being the case, more effort must be put into development legal instruments to facilitate prosecution of that crime and into mobilizing the political will of States to suppress that illicit traffic effectively.

118. In view of the changes in the role of mercenaries and the progress made towards a legal definition of a mercenary, it is recommended that the Commission on Human Rights should instruct the Special Rapportuer, with the support of the second expert meeting, to propose a new definition, relating both to the mercenary and to the more complex phenomenon of mercenarism. The proposal should include a clear nationality criterion and a suggestion on the procedure to be followed for international adoption of a new definition.

119. In view of the entry into force of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries it is recommended that an effort be made to significantly increase the number of Member States which have ratified or acceded. That would facilitate the banning of such activities and create an international climate more favourable to self-determination and defence of human rights.

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RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Report of the Secretary-General submitted pursuant to Commission resolution 2001/5

CONTENTS

		Paragraphs	Page
Introduction		1 - 2	2
I.	IMPLEMENTATION OF THE PROGRAMME OF ACTION FOR THE THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION AND COORDINATION OF ACTIVITIES	3	2
II.	SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE	4 - 7	2
III.	INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION	8	3
IV.	WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE	9 - 80	3

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Introduction

1. In paragraph 70 of its resolution 2001/5, the Commission on Human Rights requested the Secretary-General to submit a report to the Commission at its fifty-seventh session on the implementation of its resolution under the agenda item entitled "Racism, racial discrimination, xenophobia and all forms of discrimination". The present report is submitted pursuant to that resolution.

2. The report makes reference to the specific requests of the Commission in resolution 2001/5, and action taken to date to implement those requests. In the context of reporting to the Commission, the report also contains information regarding follow-up and implementation of the Declaration and Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

I. IMPLEMENTATION OF THE PROGRAMME OF ACTION FOR THE THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION AND COORDINATION OF ACTIVITIES

3. Commission resolution 2001/5 regarding the implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination and coordination of activities contains no specific requests to the Secretary-General. It is to be noted that the interim anti-discrimination unit established within OHCHR has been assigned responsibility for the implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination. It is also to be noted that the Commission, in its previous resolution 1998/26, requested in paragraph 59 "that the activities of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination be focused towards the preparatory process for the World Conference ... ". In this regard, attention is drawn to the report of the Secretary-General on the Implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination submitted to the General Assembly at its fifty-sixth session (A/56/481). The interim anti-discrimination unit will have as an important focus of its work to undertake those activities of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination that have not yet been implemented.

II. SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

4. Concerning specific requests made in Commission resolution 2001/5 to the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, attention is drawn to the report of the Special Rapporteur to the fifty-eighth session of the Commission (E/CN.4/2002/24).

5. In paragraph 39 of its resolution, the Commission requested the High Commissioner for Human Rights to "continue to undertake research and consultations on the use of the Internet for purposes of incitement to racial hatred, racist propaganda and xenophobia, to study ways of promoting international cooperation in this area, and to draw up a programme of human rights

education and exchanges over the Internet on experience in the struggle against racism, xenophobia and anti-Semitism". In response to this request, OHCHR submitted a report to the second session of the Preparatory Committee for the World Conference on the use of the Internet for purposes of incitement to racial hatred, racist propaganda and xenophobia, and on possible ways of promoting international cooperation in this area (A/CONF.189/PC.2/12).

6. It is recalled that OHCHR had previously already undertaken a number of actions concerning this subject. On 20 May 1999, the High Commissioner sent a letter to States and organizations inviting comments and asking for information and views with regard to this subject. The results of these consultations were submitted to the first session of the Preparatory Committee (A/CONF.189/PC.1/5).

7. Furthermore, the expert seminar on remedies available to the victims of racism, racial discrimination, xenophobia and related intolerance, held from 16 to 18 February 2000, had as one of its themes "Racism on the Internet: legal and technical questions". The report of the seminar (A/CONF.189/PC.1/8) contained the conclusions and recommendations of the experts. This meeting followed two previous seminars that OHCHR had held which focused on the question of the Internet and its use for the purpose of incitement to racial hatred and the dissemination of racist propaganda, as well as on ways to promote international cooperation in this area. (See the report of the expert seminar on the role of the Internet in the light of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (E/CN.4/1998/77/Add.2) and the report of the United Nations seminar to assess the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination with particular reference to articles 4 and 6 (E/CN.4/1997/68/Add.1).)

III. INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

8. Regarding the International Convention on the Elimination of All Forms of Racial Discrimination, attention is drawn to the most recent report of the Committee on the Elimination of Racial Discrimination to the General Assembly (A/56/18), which provides information on the International Convention and its application.

IV. WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

9. In its resolution 52/111, the General Assembly decided to convene a World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, to be held not later than 2001. The Conference was held from 31 August to 7 September 2001, in Durban, South Africa. For information regarding the outcome of the Conference, attention is drawn to the report of the Conference (A/CONF.189/12).

10. This part of the report contains information regarding follow-up to the Conference.

A. Follow-up activities by States

11. On 5 November 2001, OHCHR sent a note verbale to States requesting information on possible follow-up activities to the Conference. The responses received are summarized below.

12. The Government of Argentina reported that it held a meeting on 10 December to discuss the implementation of the regional workshop on economic, cultural and social rights held in October in Buenos Aires and to discuss the outcomes of the Durban Conference and plans for implementation of the outcome. A number of civil society actors, representatives of municipal and provincial governments, and academics participated in this meeting organized by the Ministry for Foreign Affairs, the Ministry of Justice and the United Nations Development Programme Resident Representative. The meeting primarily discussed the development of national plans of action, pursuant to the Durban Declaration and Programme of Action. Argentina reported that its action plan will also include the creation of a national institution to coordinate all the implementation activities. The Government intends to carry out consultations at the grass-roots level and will also involve legislative authorities and academics. It plans to consult with the United Nations on such methodologies as well. Argentina reported that it expects this plan of action to be in place by 10 December 2002.

13. The Government of Colombia indicated that it planned to continue its national efforts to combat racial discrimination. Colombia ratified Law 649 of 2001 which implements article 176 of the Political Constitution of Colombia. It concerns the composition of the Chamber of Representatives and designates seats to identified minority groups, including Blacks and indigenous representatives. The Government has also prepared a policy paper on the Afro-Colombian population that will soon be approved by the National Council on Policy. Several sectors of Colombian society which deal with racial and ethnic matters will participate in the development of a national action plan as envisaged in the Durban Declaration and Programme of Action.

14. The Government of Cuba reported that a population census is planned to take place in 2002 that will take into account current statistical indicators to give a better understanding of the situation and composition of Cuban society. The Government stated that it gives special importance to the rapid implementation of the Durban Declaration and Programme of Action, particularly actions intended to alleviate the suffering of descendants of slavery, indigenous groups and victims of colonialism. Cuba stated that it also emphasized the need to strengthen cooperation with respect to: (i) creating an international order grounded in equality, solidarity and social justice; (ii) the redistribution of wealth between and inside countries; (iii) universal ratification of the International Convention on the Elimination of All Forms of Racial Discrimination; (iv) a unit to combat racism at the Office of the High Commissioner for Human Rights; (v) progressive development of international human rights instruments on the human rights of disabled persons; (vi) extra efforts to finalize the draft declaration on the rights of indigenous peoples; (vii) promoting cultural development as a basis for fostering respect for diversity; (viii) giving priority to human rights and education in order to eradicate illiteracy; (ix) to promote ethical codes in international communication (especially in the realm of new technologies such as the Internet).

15. The Government of the Czech Republic stated that it intends to take steps to implement the provisions of the Durban Programme of Action. The Standing Inter-Ministerial Commission to Combat Extremism, Racism and Xenophobia was established on 8 November 2001 and is tasked with reviewing the fulfilment of current initiatives to combat extremism, racism and xenophobia in the Czech Republic. The Ministry for Foreign Affairs will incorporate the commitments arising from the Durban Programme of Action into the document prepared by the Standing Committee. The Czech Republic also plans to establish a national plan of action to combat racism, racial discrimination, xenophobia and related intolerance, with the involvement of all relevant ministries, authorities, organs and non-governmental organizations. The Government will continue to work with the NGO, Human Being in Need, in its campaign against racism, racial discrimination, xenophobia and related intolerance in the Czech media.

16. The Government of Germany reported on a number of national measures against right-wing extremism, racism and xenophobia. The Government stated that it supports the implementation of the package of measures pursuant to article 13 of the Treaty of Amsterdam for fighting discrimination, racism and xenophobia. It is also drafting an anti-discrimination act under civil law and under labour law. In September 2001, the Government signed a document under which it declared that it recognizes the individual complaint procedure under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.

17. The Government of Morocco reported that it had canvassed its national institution for information about follow-up to the Durban Declaration and Programme of Action. A colloquium on the Conference will be organized in order to inform and sensitize the general public about the importance and universal application of the documents adopted in Durban. The Moroccan national institution also plans to publish in Arabic a study of the norms contained in the Universal Declaration of Human Rights; a French version of the study was published in 2000.

18. The Government of Romania responded that it is planning a number of legislative and institutional actions, including ratification of the European Charter for Regional or Minority Languages, and the application and development of the government ordinances on anti-discrimination and on refugees, adopted in 2000. The project to establish a national council against discrimination is in place and the Government hopes to approve it in the coming weeks. The Government will continue to pay particular attention to its comprehensive long-term (2001-2010) programme to improve the situation of Roma. Romania also plans to make the declaration recognizing the competence of the Committee on the Elimination of Racial Discrimination pursuant to article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination. Furthermore, it was indicated that a number of meetings and seminars will be held in Romania by non-governmental organizations, and other activities will take place in cooperation or consultation with NGOs.

19. The Government of the Russian Federation reported that just before the World Conference, the Government had approved a comprehensive federal programme entitled, "The Formation of the Establishment of a Consciousness of Tolerance and Prevention of Extremism in

the Russian Federation (2001-2005)". The programme was prepared using, among other things, the results of preparatory work for the World Conference. The Government also states that the documents that were adopted in Durban will be taken into consideration during the implementation of this programme.

B. Follow-up activities by OHCHR

Establishment of the Anti-Discrimination Unit

20. An important follow-up activity is the establishment, on an interim basis, of an Anti-Discrimination Unit within OHCHR. The Anti-Discrimination Unit will principally focus on the implementation of the Durban Declaration and Programme of Action, although it will also have responsibility for implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination.

21. The Anti-Discrimination Unit will provisionally have the responsibilities described below, although it is noted that the terms of reference may be clarified further following action taken by the General Assembly on the outcome of the World Conference:

(a) To compile and prepare an annual progress report on the action taken by States, United Nations bodies and specialized agencies, treaty bodies and human rights mechanisms, national human rights institutions, and non-governmental organizations to implement the Declaration and Programme of Action. The report will be submitted to the Commission on Human Rights and the General Assembly;

(b) To produce and disseminate an annual publication on the progress achieved in implementing the Durban Declaration and Programme of Action and the difficulties and problems encountered in the process of implementation. This publication will be based on the reports submitted to the Commission on Human Rights and the General Assembly;

(c) To compile and produce other reports on follow-up to the Conference; briefing notes, speeches, progress reports; other documents related to coordination and administrative aspects; fund-raising documents for donor organizations; and project documents for the Office, as and when needed;

(d) To provide backstopping to the group of five independent eminent experts to be appointed to follow the implementation of the provisions of the Durban Declaration and Programme of Action if the proposal is endorsed by the General Assembly;

(e) To explore the possibility of establishing and maintaining a database of good practices in addressing racism, racial discrimination, xenophobia and related intolerance;

(f) To maintain and strengthen the links that were developed around the world during 2000 and 2001 in the course of the preparations for the Conference with hundreds of non-governmental organizations, including youth groups, and to promote their active involvement in the implementation of the outcome of the Conference;

(g) To continue and strengthen regular liaison with parliamentarians, religious leaders, business and trade unions with a view to promoting their active involvement in the follow-up;

(h) To continue and strengthen active liaison with United Nations agencies and other intergovernmental bodies on Durban follow-up, to organize regular consultations with them and develop and implement joint activities with them;

(i) To seek to include the assessment of progress made towards implementation of the Durban Programme of Action at governmental and expert meetings to be convened by OHCHR at the regional or subregional levels;

(j) To support about 10 selected awareness-building projects within the five regions with national institutions, youth and women's groups, and other interested entities on specific themes and topics relating to the Conference.

New OHCHR web site activities

22. The successful home page and links to related documentation for the World Conference is being converted into a home page for follow-up to the Conference. It will highlight meetings, plans and initiatives of all actors and be a major vehicle of communication for the implementation drive. A dedicated web page for indigenous peoples was launched on 10 December 2001 on the occasion of Human Rights Day as well as a page on human rights in development.

Technical cooperation

23. Through its technical cooperation programme, OHCHR is engaged in assisting States in building and strengthening national capacities (structures, institutions, processes), which have a direct impact on the observance of human rights, including combating racial discrimination. Among the various components of its technical cooperation programme, the following have an important relevance in the follow-up to the Conference.

24. *National plans of action.* OHCHR is providing assistance in the elaboration, development and implementation of national plans of action for human rights and/or for human rights education. A handbook on how to develop such plans has been recently finalized and two compendiums on existing national human rights plans as well as national human rights education plans are also available. OHCHR will respond to requests from Member States for assistance in developing or implementing specific national plans against racial discrimination, which would be part of or complementary to overall human rights/human rights education plans.

25. *National institutions*. OHCHR actively engaged with national institutions in preparations for, and follow-up to, the Conference. OHCHR will award a number of small grants relating to national institutions for follow-up activities to the Conference at the national level in 2002.

26. At the regional and international levels national institutions have mobilized to discuss how to implement in practical ways what was agreed upon in Durban, including how to give action to their own joint statement to the World Conference which was adopted on 1 September 2001. Since the Conference, the following regional meetings have been held where post-Conference issues were discussed:

The Sixth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions (Colombo, 24-27 September 2001);

A Danish Centre for Human Rights initiative with Latin American human rights institutions (Copenhagen, 23-25 September 2001) where they discussed various issues including how to implement the Durban Programme of Action and their statement at the national level;

The Second Meeting of the Euro-Mediterranean National Institutions (Athens, 1-3 November 2001) where national institutions reviewed issues concerning immigration and racism.

27. In addition, with the support of OHCHR, the following regional meetings are planned which will have a direct focus on follow-up to the Conference and anti-discrimination issues:

"Racism, the media and human rights education" a meeting of Asian-Pacific national human rights institutions to be held in the first quarter of 2002, in cooperation with the Asia Pacific Forum of National Human Rights Institutions;

"Promoting and protecting reproductive rights of women through the work of national human rights institutions" a joint initiative of OHCHR, the United Nations Population Fund and the Inter-American Institute for Human Rights to be held in the first quarter of 2002 in Costa Rica;

"Indigenous peoples and persons of African descent rights in the Caribbean", a regional meeting of the Network of National Institutions of the Americas to be held in the first quarter of 2002;

The second European Meeting of National Human Rights Institutions, to be held in Dublin and Belfast, Northern Ireland, on dates to be determined, with a focus on refugees and asylum-seekers, minorities, and the prevention of conflict.

28. OHCHR and the Danish Centre for Human Rights have established a web site (www.nhri.net) on national institutions. This includes a section on racism and discrimination issues dealt with by national institutions. This web site will facilitate discussions in order to

prepare for the sixth International Conference of National Human Rights Institutions to be held in Copenhagen and Lund, Sweden, from 10 to 13 April 2002. This conference will have as its main theme the follow-up to the World Conference, and discussions will focus on remedies, monitoring, advocacy and education.

29. A large number of national institutions have already begun implementation and planning of activities relating to the World Conference at the national level. Activities relate to the review of national legislation to see how it meets international norms regarding discrimination; the development of national action plans and national and local-level consultations on race; the strengthening of networks; the dissemination of information on race issues and human rights education; and addressing racism on the Internet, slavery and other issues related to the World Conference. Many national institutions used Human Rights Day to launch their World Conference-related initiatives.

30. *Education and training*. Human rights education aims at preventing discriminatory attitudes and behaviour, combating bias and prejudices and appreciating cultural diversity. OHCHR is carrying out education, training and public information activities in the context of individual country projects as well as in connection with the implementation of the United Nations Decade for Human Rights Education (1995-2004).

31. Since the World Conference, the contribution of human rights education in combating racial discrimination and specific related activities have been highlighted in various international or regional initiatives organized by various human rights education actors, such as:

The Human Rights Educators' Forum (Corrymeela, United Kingdom, 4-7 October 2001) organized by Amnesty International;

The Seminar on Human Rights Education for a Culture of Peace in Latin America (Caracas, 14-17 October 2001), organized by the Red Latinoamericana de Educación para la Paz y los Derechos Humanos; and

The UNESCO/OHCHR Regional Conference on Human Rights Education in Latin America and the Caribbean (Mexico City, 28 November-1 December 2001), at which representatives of relevant Governments, national human rights institutions, non-governmental organizations and academic institutions adopted the Mexico Declaration, which contains various recommendations for furthering human rights education at the regional, subregional and national levels.

32. In addition, OHCHR is developing specific human rights training materials, within the United Nations Decade on Human Rights Education, aimed at specific professional categories, such as human rights monitors, police, judges, prosecutors and lawyers, and prison officials. In the development of these materials, OHCHR works in close cooperation with relevant experts and professional organizations. These training materials always include a specific component which addresses the contribution that the relevant professions can make in overcoming discrimination while performing their professional duties.

33. Other relevant educational projects undertaken by OHCHR that are relevant to follow-up to the World Conference include:

(a) The ACT (Assisting Communities Together) project, initiated in 1998 in cooperation with UNDP to assist organizations and individuals at the local level in carrying out activities aimed at strengthening the promotion and protection of human rights in local communities. Since 1998, 166 projects have been implemented in more than 30 countries; some are aimed at combating discrimination through education;

(b) The OHCHR database on human rights education (www.unhchr.ch/hredu.nsf) and its resource collection on human rights education (publicly accessible at OHCHR in Geneva) include education and training materials to support anti-discrimination programmes.

34. *Ratification of international instruments and legislative reform.* As part of its technical cooperation programme, OHCHR works in a number of countries on projects aimed at facilitating the ratification of international human rights treaties and consequent harmonization of domestic legislation. All contain anti-discrimination provisions.

35. *Regional institutions and activities.* OHCHR works closely with regional organizations and institutions, which have a major role to play in follow-up to the Conference. Activities and projects with those organizations will focus on implementation of the outcome of the Conference as they relate to the various regions as well as implementing regional documents that address issues relevant to the Conference. The United Nations regional commissions and OHCHR regional advisers based at those commissions will have a central element in follow-up by OHCHR at the regional level and within the United Nations country teams.

Human rights monitoring and protection activities

36. *Thematic and country mechanisms of the Commission on Human Rights.* Most of the Commission mandate-holders, both thematic and country oriented, are faced with violations of the human rights of individuals or groups that are due to discriminatory practices based on race, ethnicity, religion or gender.

37. Four thematic rapporteurs were specifically invited by the General Assembly or the Commission to contribute to and participate in the Conference: the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on freedom of opinion and expression. The Special Rapporteur on violence against women, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and the Special Rapporteur on human rights and extreme poverty also attended the World Conference and participated actively in events related to it. All can be expected to maintain a focus on racism, racial discrimination, xenophobia and related intolerance in their future work. In addition, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living has a mandate to address issues of racial discrimination in the course of his work, and is expected to address

themes of the Conference pertinent to his mandate. The link between globalization and racial discrimination will be one of the issues on which the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance will focus his attention in the coming year.

38. Another important area where special procedures mandate-holders are expected to be active in the coming year concerns the human rights of migrants, refugees and internally displaced persons, who are among the groups most vulnerable to discrimination. It is noted that since the 11 September 2001 terrorist attacks, migrants and non-nationals have become the object of increased measures of control in a number of countries, putting at risk some of their most fundamental rights. There have also been incidents of violent acts of hate and xenophobia against them. This situation has resulted in an increasing risk of stigmatization of migrants and a perception of migration as a threat to security.

39. At the Conference, States committed themselves to implementing a wide variety of measures to assist migrants, including through national plans of action, to combat racism, racial discrimination, xenophobia and related intolerance against migrants, and to ensure that international human rights standards applicable to migrants are respected. It is expected that special procedures mandate-holders will focus their attention in the future on what steps States have taken to implement the commitments made in Durban.

Human rights investigations

40. OHCHR has been involved in a number of important investigations which have addressed the question of impunity for major violations of human rights (e.g. in Afghanistan, the Democratic Republic of Congo, East Timor, Yugoslavia, Liberia and Rwanda). Methodology will be further developed to deal with situations that are relevant to the outcome of the Conference and that may require future action by OHCHR.

Inputs to the human rights treaty bodies system

41. OHCHR staff, including its geographic desk officers, provide input as appropriate to treaty bodies concerning States whose periodic reports are being examined. Special attention will now be given to providing input relevant to the themes of the Conference so that human rights treaty bodies can focus additional attention on the subjects included in the outcome of the Durban process and make recommendations to States parties accordingly. Through briefings and compilation of relevant jurisprudence, OHCHR will also undertake efforts to encourage States parties to make the declaration under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination and the Optional Protocol to the International Covenant on Civil and Political Rights.

Indigenous peoples

42. The Conference addressed in detail the situation of indigenous peoples and OHCHR will act to promote implementation of the provisions concerning them, including as the former relate to OHCHR's role concerning the Permanent Forum on Indigenous Issues scheduled to hold its

first session in May 2002. OHCHR is the lead agency for the Permanent Forum and will take steps to ensure that the commitments made in Durban are brought before the Forum for further consideration as appropriate. OHCHR will also be actively disseminating the new United Nations Guide for Indigenous Peoples.

Minorities

43. The Conference recognized that minorities, and issues that concern them, need to receive additional attention from States. Concerted efforts aimed at supporting the effective participation of minorities in public life and the empowerment of minorities for inclusive development are needed. OHCHR has published a new Guide for Minorities, designed to enable minorities to understand and participate in the United Nations as well as in regional organizations. The year 2002 will mark the tenth anniversary of the adoption of the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. This occasion will provide a special opportunity to move forward on the implementation of provisions applicable to minorities that were agreed to in Durban.

HIV/AIDS

44. The Conference recognized the importance of taking action on HIV/AIDS and how the spread of the pandemic can, under certain circumstances, be related to racism, racial discrimination, xenophobia and related intolerance. OHCHR is working closely with UNAIDS to follow up on commitments made in Durban in the context of the former's broader programme of activities relating to HIV/AIDS. In October 2001, OHCHR and UNAIDS, together with the Asia Pacific Forum, organized a workshop to enhance awareness of and cooperation on HIV/AIDS-related human rights issues in the Asian-Pacific region through the promotion and strengthening of national human rights institutions. The workshop focused on the right to equality and non-discrimination and on the right to health in particular, and on how the core functions of national human rights institutions - complaint handling and investigation, education and promotion, and legal reform - can address these issues.

45. Other follow-up activities in 2002 will focus on improving accountability in the context of HIV/AIDS, in particular by supporting the human rights treaty bodies and special rapporteurs to address HIV/AIDS-related human rights issues. OHCHR hopes to see the protection and enjoyment of human rights integrated into national responses to the pandemic by supporting the work of national human rights institutions.

C. Follow-up by United Nations bodies and specialized agencies and international organizations

46. On 2 November 2001 the High Commissioner sent letters to 22 United Nations bodies, programmes and specialized agencies and to 6 regional organizations requesting information on intended follow-up to the Conference.

47. OHCHR received written contributions from the United Nations Centre for Human Settlements (Habitat), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Office of the United Nations High Commissioner for Refugees (UNHCR), the World Health Organization (WHO), the Pan American Health Organization (PAHO), the International Labour Organization (ILO), the International Monetary Fund (IMF), the United Nations Economic and Social Commission for Western Asia (ESCWA), the Organization of American States (OAS), the Council of Europe and the League of Arab States.

48. During the commemoration of Human Rights Day on 10 December 2001, which was devoted to an initial stocktaking on plans and activities for the follow-up to the Conference, several organizations, namely UNDP, Habitat, UNHCR, UNESCO, ILO and the Inter-Parliamentary Union (IPU), took the floor to give further information about their initiatives.

49. Most organizations have indicated to OHCHR that they intend to familiarize their members and constituencies with the outcome of the Conference, particularly with regard to the paragraphs that are of relevance to their areas of work. The responses received indicate that these organizations have highlighted the outcome of the Conference at internal meetings, as well as through the dissemination of information within their respective internal structures.

50. Concerning initiatives of specific organizations, UNESCO's determination to ensure follow-up to the Conference is reflected in the organization's Medium-Term Strategy for 2002-2007 and the Programme and Budget for 2002-2003. UNESCO established an intersectoral working group under the chairmanship of the Assistant Director-General for Social and Human Sciences to elaborate a UNESCO plan of action to implement the Durban recommendations. UNESCO will take advantage of its participation in the International Media Working Group against Racism and Xenophobia (IMRAX) of the International Federation of Journalists, particularly with regard to raising awareness within the media and promoting the highest standards of journalism concerning matters of race, tolerance and multiculturalism.

51. UNESCO will continue to produce pedagogical material on human rights education while insisting on the training of educators and decision makers. Several publications will also be prepared within the Slave Route Project. UNESCO will encourage and assist States in revising their educational programmes at all levels to include human rights components and in developing extracurricular activities. The revision of history textbooks to eliminate negative stereotypes and discriminatory attitudes towards those who are different is a priority of UNESCO in this field. The Associated Schools Project Network will pursue the intersectoral project "Breaking the silence - teaching about the Transatlantic slave trade", developed within the context of the Slave Route Project.

52. UNESCO will also undertake specific action within the framework of the International Decade for a Culture of Peace and Non-Violence for the Children of the World (2001-2010). UNESCO has already responded to a request made in Durban with regard to the elaboration of a possible international instrument to promote respect for and preserve cultural diversity, and adopted the Universal Declaration on Cultural Diversity at the thirty-first session of its General Conference in November 2001.

53. ILO has indicated that it will continue research, data collection and technical assistance on issues related to racism, racial discrimination and xenophobia in the world of work, including against indigenous and tribal peoples and migrant workers. It will also continue to provide workers' education and management training on issues of discrimination; to support the Global Compact Initiative on Diversity and Equality; to support Governments in their development of laws, policies, and administrative and enforcement mechanisms addressing racial discrimination at the workplace; and to draw the attention of the United Nations treaty bodies to information on discrimination which emerges from its own supervisory mechanisms.

54. ILO is finalizing publications on the effectiveness of anti-discrimination legislation and training with a focus on migrant and ethnic minority workers, as well as a practitioner's handbook on discrimination against migrants and a compendium of anti-discrimination measures. The ILO Global Report on Discrimination, scheduled for 2003 in the context of the follow-up to the Declaration on Fundamental Rights and Principles at Work, will benefit from the Conference process and will be among the ILO's contributions to its follow-up.

55. ILO and UNCTAD are planning a joint capacity-building activity entitled "Mainstreaming trade issues and fundamental principles and rights at work into developing policy". UNDP launched its policy paper, "UNDP and indigenous peoples: a policy of engagement" in Durban and since then has disseminated the policy as widely as possible. UNDP will, moreover, support the preparations for, participation in and outcomes of the first session of the Permanent Forum on Indigenous Issues.

56. WHO will be pursuing follow-up to the Conference in the context of equitable health systems. One example of this is its programme on indigenous health. WHO is currently taking initial steps towards the production of a Global Strategy on Indigenous Health. Other initiatives are being undertaken by PAHO, the WHO regional office for the Americas, including publications and the organization of meetings at the national and subregional levels on ethnicity and health related to people of African descent and indigenous peoples.

57. Some organizations, such as ESCWA, will mainstream the outcome of the Conference in their existing projects. ESCWA is also considering organizing a conference on the Dialogue among Civilizations. Other organizations have ongoing programmes that respond to requests made in Durban, for example Habitat's ongoing activities related to the realization of human rights in the context of human settlement, or the Poverty Reduction Strategy Papers of the IMF.

58. Some organizations have convened or are going to convene specific meetings on issues addressed in Durban. The League of Arab States organized a high-level meeting on the Dialogue among Civilizations on 26 and 27 November 2001.

59. The OAS will hold an internal meeting in early 2002 to examine the need for the preparation of an inter-American convention against racism and all forms of discrimination and intolerance. A study on "The human rights situation of Afro-descendants in the Americas" is also being prepared.

60. The Council of Europe will organize a meeting for its member States on the follow-up to the European and World Conferences against racism on 27 and 28 February 2002.

61. UNHCR field offices have been encouraged to identify practical steps to ensure implementation of the refugee-related paragraphs adopted at the Conference, and to carry out specific activities in this regard. IPU intends to hold a parliamentary seminar in 2002, in cooperation with UNDP, OHCHR and non-governmental partners, to address problems related to the exercise of freedom of speech. IPU also plans to draw the attention of Parliaments to the special role they have to play in the follow-up to Durban on the International Day for the Elimination of Racial Discrimination on 21 March 2002 which will coincide with the Union's 107th Inter-Parliamentary Conference in Marrakech, Morocco. IPU indicated that it plans to set up a database on parliamentary committees which cover issues relating to racism, in order to contribute to the creation of parliamentary networks and to assist in mobilizing the widest parliamentary support.

D. Follow-up by human rights treaty bodies

62. The Committee on the Rights of the Child decided at its twenty-eighth session held from 24 September to 12 October 2001 to request all States parties in the future to include specific information in their next periodic reports on the measures and programmes relevant to the Convention on the Rights of the Child that they have implemented pursuant to the commitments made at the World Conference.

63. At its twenty-seventh session, held from 12 to 30 November 2001, the Committee on Economic, Social and Cultural Rights devoted a meeting to the issue of follow-up to the World Conference. The Committee decided to continue addressing, in its dialogue with States parties and in concluding observations, the non-discrimination provision in article 2, paragraph 2, of the Covenant and other relevant provisions.

64. The Committee on the Elimination of Racial Discrimination, the Human Rights Committee and the Committee against Torture have decided to include a discussion of the follow-up to Durban on the agendas at their next sessions.

65. Follow-up to Durban will be the theme of the next joint meeting of the chairpersons of human rights treaty bodies and the holders of special procedures mandates which is currently scheduled to be held at the end of June 2002.

E. Follow-up by NGOs

66. OHCHR has received numerous reports which suggest that NGOs, NGO networks and caucuses that were developed during the preparations for the World Conference are actively engaged in follow-up activities in all regions of the world.

67. It should be recalled that nearly 1,300 NGOs not in consultative status with the Economic and Social Council were specifically accredited to the Conference process, that over 4,000 NGO representatives participated in the Conference in Durban and nearly 8,000 individuals were

registered for the NGO Forum, and that there were over 40 active NGO caucuses on specific issues. Many of these groups report that, as a first step upon returning home, they have organized meetings and conferences, written articles and published reports to share the outcome of the Conference with their constituencies.

68. In some cases, new organizations or alliances have come into being with a specific mandate to take up the anti-discrimination agenda of Durban. In others, NGOs have recommitted themselves and their members to combating racism. For example, the Conference of NGOs in Consultative Status with ECOSOC (CONGO) reports that it is working to integrate the Durban vision and agenda into the programme of the Millennium Summit, and that each activity it organizes in the coming year will have an anti-racism component. The Center for the Development of Democracy and Human Rights, on behalf of the Russian Network against Racism, which now includes more than 70 NGOs in the Russian Federation, states that it intends to take all positive results of the World Conference and use them to promote tolerance and human rights for all people, irrespective of their race, colour, ethnic origin, or religious beliefs. The Caucus on Migration and Refugees - a worldwide electronic network on migration, refugees, asylum-seekers and internally displaced persons established during the second session of the Preparatory Committee and which now has more than 430 members - has been working for, inter alia, the entry into force of the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families.

69. In the labour area, the International Confederation of Free Trade Unions, which represents over 125 million workers, has endorsed a plan of action, "Trade Unions say NO to Racism and Xenophobia", and strongly urged all national affiliates and regional organizations to take appropriate measures to implement it without delay. The European Network Against Racism, based in Western Europe, and United for Inter-Cultural Action in Eastern and Central Europe, are both focusing their energies on ensuring that Governments adopt and implement national action plans against racism. The Canadian Race Relations Foundation reports that follow-up initiatives are planned across the country that will focus on holding the Government to its promise of using the Conference process to create a domestic plan of action to strengthen the struggle against racism and hate in Canada. Soroptimist International, with members in 121 countries, has asked its national sections to research the status of their countries with respect to the implementation of United Nations instruments dealing with racial equality and discrimination, and thereafter to review progress annually and follow this up with advocacy and action.

70. OHCHR has been informed by the South African NGO Coalition (SANGOCO) that now that its mandate for the NGO Forum has ended, it will focus on combating racism at home and on the African continent. OHCHR has also received a report from a new organization, the International Alliance against Racism, Racial Discrimination, Xenophobia and Related Intolerance (IAAR), with headquarters in the Caribbean, whose concerns include the protection of the rights of indigenous peoples, emancipation in the Americas, Africa and the Diaspora, and playing a role to support United Nations efforts to combat racism.

71. OHCHR has received reports from a number of NGOs, among them Human Rights Internet and CONGO, that they are continuing to develop their anti-racism web sites and remain committed to finding ways of using the Internet to combat racism and xenophobia.

72. Many groups are concerned about the intersection of racism with gender, with poverty, and with disability. The Center for Women's Global Leadership reports that it will focus its training in June 2002 on the intersection of racism, sexism and other oppressions, exploring the interconnections between different kinds of oppression that women face as they affect women's lives on the personal, structural and institutional levels.

F. Follow-up by youth groups

73. At the International Youth Summit that took place in Durban just prior to the World Conference, the participants decided to create a global youth network to strengthen youth action against racism, discrimination and intolerance. The objectives that the youth have outlined for the global youth network are: to exchange and disseminate information on good practices to combat racism; to coordinate advocacy efforts at the national, regional and international levels for the implementation of the International Youth Declaration and Plan of Action; to monitor the implementation of commitments made by States in Durban (in particular those relating to youth); and to promote human rights as a tool for combating racism. The members of the global youth network communicate with each other through Internet discussion groups that were created specially for this purpose.

74. The global youth network consists of different regional and subregional youth networks, all of which are in the process of defining their structure and follow-up activities. In Africa, the youth network has launched the idea of training on human rights and youth policy development for youth multipliers. The Asian-Pacific youth network identified one national representative in each country of the region who met in Singapore from 3 to 5 February 2002 to discuss follow-up strategies. The aim of the Asian-Pacific network is to put the youth plan of action into practice and to share information on each country. The international organization MADRE has launched, in the name of the Americas regional youth network, a compilation of all reference material on children, adolescents and youth assembled during the regional preparatory process for the World Conference, including for expert meetings, intergovernmental meetings, and NGO and satellite meetings.

75. In Europe, information on the International Youth Summit and the outcome of the World Conference has been shared with youth who were not in Durban and with regional organizations (Council of Europe, European Commission) at the following two conferences:

> Berlin, 20-23 October 2001, "Youth for tolerance and democracy", supported by the European Commission and the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth;
>
> Lisbon, 23-26 November 2001, "Lisbon Forum 2001: youth and children in Africa, actors of their own development", organized by the North-South Centre of the Council of Europe.

76. Follow-up to the World Conference was the main theme of the youth conference that took place in Bucharest from 4 to 9 December 2001. The conference provided an opportunity for the youth representatives that were elected by European youth in Durban to meet, with the objective of developing a European regional work plan, and for minority communities from

around the continent, as well as the Roma youth caucus, to evaluate their participation in the World Conference and reflect on their role as youth leaders and actors for the development of their communities.

77. An initiative at the subregional level is the intention of the Latin American youth caucus to monitor the implementation by State actors of the recommendations of the World Conference as well as the implementation of the final documents adopted at the Regional Conference of the Americas. The plan is to lobby for the adoption of national action plans against discrimination and racism, with special focus on indigenous and Afro-descendent youth; to carry out awareness-raising activities, in particular by addressing the media; and to create a directory of all organizations committed to the youth network against racism.

78. One of the main recommendations of the regional workshop "Caucasus youth for inter-ethnic understanding" that took place in Baku in June 2001 was to conduct a regional campaign against racism, nationalism and intolerance; to coordinate activities in this field between youth groups from Azerbaijan, Armenia and Georgia; and to monitor the protection of minority rights. This youth initiative attracted attention from the media, the Governments, and the High Commissioner for Minorities of the Organization for Security and Cooperation in Europe. The Caucasus youth involved in this project remain committed to and actively engaged in trying to implement the recommendations, in spite of the fact that they were not present in Durban.

79. Besides the initiatives mentioned above, numerous NGOs and youth organizations have placed the struggle against discrimination and racism on their local or national agenda and have informed OHCHR of activities they have undertaken or plan to carry out. The Philippine Human Rights Information Center, for example, has devoted the latest issue of its publication *Human Rights Forum* to "The many faces of discrimination". The Italian NGO URIHI has produced a video on NGO and youth participation in Durban which allows victims of racism to explain their cause and discusses the importance of a leading youth role in the struggle against racism and intolerance, and explores past and contemporary forms of slavery. The video was distributed to 100 local Italian TV networks.

80. The Urban Alliance on Race Relations of Toronto, Canada, conducted in November 2001 a Diversity Training workshop, a one-day event for youth on how to facilitate an anti-racism workshop. In the United States of America representatives of the NGO Global Kids who participated in the International Youth Summit and in the World Conference regularly conduct presentations in schools about their experience in South Africa.

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RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Annual progress report of the United Nations High Commissioner for Human Rights on the implementation of the Durban Declaration and Programme of Action

Note by the secretariat

The contents of this report have been consolidated with and are included in the report of the Secretary-General on the implementation of Commission resolution 2001/5 on racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2002/21).

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